

**International Labour Conference, 102nd Session, 2013**

# **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 5–44**).
- (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 45–857**).
- (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 Labour Relations and Collective Bargaining in the Public Service (**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/global/standards/lang-en/index.htm](http://www.ilo.org/global/standards/lang-en/index.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)*

<b>6</b>	<b>Labour administration and inspection</b>
●	C063 Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)
★	C081 <i>Labour Inspection Convention, 1947 (No. 81)</i>
	C085 Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)
	C129 <i>Labour Inspection (Agriculture) Convention, 1969 (No. 129)</i>
	C150 Labour Administration Convention, 1978 (No. 150)
	C160 Labour Statistics Convention, 1985 (No. 160)
<b>7</b>	<b>Employment policy and promotion</b>
	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 <i>Employment Policy Convention, 1964 (No. 122)</i>
	C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
	C181 Private Employment Agencies Convention, 1997 (No. 181)
<b>8</b>	<b>Vocational guidance and training</b>
	C140 Paid Educational Leave Convention, 1974 (No. 140)
	C142 Human Resources Development Convention, 1975 (No. 142)
<b>9</b>	<b>Employment security</b>
	C158 Termination of Employment Convention, 1982 (No. 158)
<b>10</b>	<b>Wages</b>
	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)

- | <b>13 Social security</b>      |      |   |
|--------------------------------|------|---|
| ★                              | 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) |
| <b>14 Maternity protection</b> |      |   |
| ★                              | C003 | Maternity Protection Convention, 1919 (No. 3)                                       |
| ●                              | C103 | Maternity Protection Convention (Revised), 1952 (No. 103)                           |
|                                | C183 | Maternity Protection Convention, 2000 (No. 183)                                     |
| <b>15 Social policy</b>        |      |   |
| ★                              | C082 | Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82)              |
|                                | C117 | Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)                 |
| <b>16 Migrant workers</b>      |      |   |
|                                | 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)
- ◆ MLC Maritime Labour Convention, 2006

<b>18</b>	<b>Fishers</b>	
★	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)
<b>19</b>	<b>Dockworkers</b>	
	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)
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	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)
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	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)
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C138 .....	295	Submission to the competent authorities .....	847
C161 .....	718	<b>China</b>	
C182 .....	296	C100 .....	441
<b>Burundi</b>		C122 .....	622
C011 .....	70	C155 .....	721
C026 .....	675	C167 .....	722
C029 .....	220	<b>Colombia</b>	
C062 .....	719	C012 .....	753
C081 .....	546	C017 .....	753
C087 .....	70	C018 .....	753
C094 .....	675	C081 .....	549
C098 .....	71	C087 .....	79
C100 .....	432	C100 .....	441
C111 .....	432	C111 .....	443
C138 .....	298	C129 .....	554
C144 .....	517	C144 .....	518
Submission to the competent authorities .....	847	C162 .....	724
<b>Cambodia</b>		C169 .....	828
C029 .....	221	Submission to the competent authorities .....	847
C087 .....	72	<b>Comoros</b>	
C100 .....	433	C017 .....	754
C122 .....	621	C019 .....	755
Submission to the competent authorities .....	847	C042 .....	755
<b>Cameroon</b>		C081 .....	555
C081 .....	546	C098 .....	82
C094 .....	676	C099 .....	677
C095 .....	676	C100 .....	444
C100 .....	434	C111 .....	445
C111 .....	434	Submission to the competent authorities .....	847
C143 .....	787	<b>Congo</b>	
<b>Canada</b>		C029 .....	222
C087 .....	74	C081 .....	556
C100 .....	436	C111 .....	446
C162 .....	719	C152 .....	811
<b>Cape Verde</b>		C182 .....	300
C081 .....	546	Submission to the competent authorities .....	847
C100 .....	437	<b>Costa Rica</b>	
C118 .....	750	C001 .....	709
<b>Central African Republic</b>		C081 .....	556
C018 .....	750	C095 .....	677
C081 .....	547	C098 .....	82
C100 .....	438	C100 .....	446
C118 .....	750	C102 .....	756
		C129 .....	558

C131.....	677	C122.....	626
C134.....	802	C128.....	759
C137.....	813	C130.....	760
C144.....	518	C131.....	679
<b>Côte d'Ivoire</b>		C149.....	843
C111.....	447	C152.....	814
Submission to the competent authorities.....	848	<b>Egypt</b>	
<b>Croatia</b>		C087.....	91
C087.....	86	C100.....	458
C111.....	447	C118.....	761
C119.....	726	<b>El Salvador</b>	
C156.....	449	C081.....	562
Submission to the competent authorities.....	848	C111.....	458
<b>Cuba</b>		C122.....	627
C081.....	558	C129.....	563
C087.....	87	Submission to the competent authorities.....	848
C100.....	449	<b>Equatorial Guinea</b>	
C111.....	449	C001.....	710
<b>Czech Republic</b>		C030.....	710
C111.....	450	C087.....	93
<b>Democratic Republic of the Congo</b>		C098.....	93
C029.....	223	Submission to the competent authorities.....	849
C081.....	559	<b>Eritrea</b>	
C100.....	452	C098.....	94
C102.....	757	<b>Estonia</b>	
C111.....	453	C081.....	563
C121.....	757	<b>Ethiopia</b>	
C144.....	519	C087.....	94
C150.....	559	C105.....	225
Submission to the competent authorities.....	848	C111.....	460
<b>Djibouti</b>		Submission to the competent authorities.....	849
C019.....	757	<b>Fiji</b>	
C024.....	758	C087.....	96
C026.....	678	C098.....	100
C037.....	758	C100.....	461
C063.....	560	C111.....	461
C081.....	560	Submission to the competent authorities.....	849
C087.....	88	<b>Finland</b>	
C094.....	678	C100.....	464
C095.....	678	C111.....	465
C096.....	625	C156.....	465
C098.....	89	<b>France</b>	
C100.....	454	C097.....	790
C115.....	727	C111.....	466
C120.....	727	C118.....	762
C122.....	625	C152.....	814
C144.....	519	<b>French Polynesia (France)</b>	
Submission to the competent authorities.....	848	C115.....	728
<b>Dominica</b>		<b>Gabon</b>	
Submission to the competent authorities.....	848	C182.....	301
<b>Dominican Republic</b>		Submission to the competent authorities.....	849
C077.....	301	<b>Georgia</b>	
C098.....	90	C052.....	710
C100.....	454	C098.....	103
C111.....	455	C138.....	304
C144.....	520	Submission to the competent authorities.....	849
<b>Ecuador</b>		<b>Germany</b>	
C081.....	561	C029.....	226
C095.....	679	C122.....	628
C111.....	457	C167.....	730
C118.....	758	<b>Ghana</b>	
C121.....	759	C081.....	564

C094 .....	680	C159 .....	632
C098 .....	105	C182 .....	311
C100 .....	468	Submission to the competent authorities.....	849
C105 .....	226	<b>Guinea-Bissau</b>	
Submission to the competent authorities .....	849	C012 .....	768
<b>Gibraltar (United Kingdom)</b>		C017 .....	768
C081 .....	611	C018 .....	768
<b>Greece</b>		C019 .....	768
C042 .....	763	C081 .....	572
C081 .....	565	Submission to the competent authorities.....	850
C087 .....	106	<b>Guyana</b>	
C095 .....	680	C029 .....	228
C098 .....	106	C042 .....	770
C100 .....	468	C081 .....	572
C102 .....	764	C087 .....	116
C111 .....	470	C098 .....	116
C122 .....	628	C100 .....	475
C138 .....	306	C111 .....	475
C150 .....	569	C129 .....	573
C154 .....	109	C137 .....	815
C156 .....	472	C140 .....	667
<b>Grenada</b>		C144 .....	521
C100 .....	474	C150 .....	574
C144 .....	520	<b>Haiti</b>	
<b>Guatemala</b>		C012 .....	770
C001 .....	711	C017 .....	770
C030 .....	711	C019 .....	771
C087 .....	110	C024 .....	770
C095 .....	682	C025 .....	770
C103 .....	783	C042 .....	770
C105 .....	227	C081 .....	574
C122 .....	630	C087 .....	117
C127 .....	731	C098 .....	117
C138 .....	308	C182 .....	312
C144 .....	520	Submission to the competent authorities.....	850
C162 .....	732	<b>Honduras</b>	
C169 .....	831	C042 .....	771
C182 .....	309	C081 .....	576
<b>Guinea</b>		C087 .....	119
C026 .....	682	C098 .....	120
C081 .....	571	C138 .....	315
C087 .....	114	C169 .....	834
C094 .....	683	C182 .....	317
C098 .....	115	Submission to the competent authorities.....	850
C099 .....	683	<b>Hong Kong Special Administrative Region (China)</b>	
C111 .....	474	C081 .....	548
C115 .....	733	C097 .....	788
C117 .....	785	<b>Hungary</b>	
C118 .....	766	C029 .....	228
C119 .....	733	C098 .....	121
C120 .....	734	C122 .....	632
C121 .....	767	<b>Iceland</b>	
C122 .....	631	C122 .....	634
C134 .....	803	C159 .....	635
C136 .....	734	<b>India</b>	
C139 .....	734	C029 .....	229
C140 .....	667	C042 .....	772
C142 .....	667	C100 .....	476
C144 .....	521	C111 .....	478
C148 .....	735	C122 .....	635
C150 .....	572		
C152 .....	815		



<b>Indonesia</b>			
C029.....	232	C081.....	580
C087.....	122	C105.....	239
C105.....	234	C129.....	581
C138.....	319	C138.....	329
C144.....	521	C143.....	793
C182.....	321	C144.....	523
<b>Iraq</b>		<b>Kiribati</b>	
C098.....	123	C087.....	124
Submission to the competent authorities.....	850	C098.....	126
<b>Ireland</b>		Submission to the competent authorities.....	851
C088.....	636	<b>Kuwait</b>	
C111.....	484	C029.....	240
C122.....	636	C105.....	241
C144.....	522	C136.....	735
C159.....	637	C144.....	523
C182.....	323	Submission to the competent authorities.....	851
Submission to the competent authorities.....	850	<b>Kyrgyzstan</b>	
<b>Islamic Republic of Iran</b>		C148.....	735
C095.....	684	C182.....	331
C111.....	480	Submission to the competent authorities.....	851
<b>Israel</b>		<b>Lebanon</b>	
C097.....	792	C017.....	774
C100.....	484	C029.....	241
C111.....	485	C071.....	803
<b>Italy</b>		C081.....	581
C111.....	486	C138.....	333
C122.....	638	C182.....	335
<b>Jamaica</b>		<b>Lesotho</b>	
C029.....	235	C081.....	581
C094.....	684	C138.....	336
C105.....	236	C182.....	337
C138.....	324	<b>Liberia</b>	
C144.....	522	C029.....	242
C182.....	325	C087.....	127
Submission to the competent authorities.....	850	C098.....	127
<b>Japan</b>		C113.....	807
C019.....	772	C114.....	807
C029.....	236	Submission to the competent authorities.....	851
C081.....	578	<b>Libya</b>	
C100.....	488	C095.....	687
C122.....	639	C131.....	688
C131.....	685	Submission to the competent authorities.....	851
C156.....	492	<b>Madagascar</b>	
C181.....	641	C081.....	583
<b>Jersey (United Kingdom)</b>		C122.....	644
C087.....	196	C124.....	338
C098.....	197	C138.....	339
<b>Jordan</b>		C144.....	524
C122.....	643	C182.....	341
C144.....	522	Submission to the competent authorities.....	852
C182.....	327	<b>Malawi</b>	
Submission to the competent authorities.....	850	C081.....	584
<b>Kazakhstan</b>		C129.....	585
C100.....	494	C138.....	342
C111.....	494	C144.....	524
C138.....	328	C182.....	343
C182.....	329	<b>Malaysia</b>	
Submission to the competent authorities.....	851	C029.....	243
<b>Kenya</b>		C081.....	586
C017.....	772	C138.....	345
C029.....	239	C182.....	346

<b>Mali</b>			
C138 .....	348		
C182 .....	349		
Submission to the competent authorities .....	852		
<b>Malta</b>			
C098 .....	128		
<b>Mauritania</b>			
C029 .....	244		
C081 .....	588		
C102 .....	775		
C118 .....	775		
C122 .....	645		
C138 .....	351		
C182 .....	352		
Submission to the competent authorities .....	852		
<b>Mauritius</b>			
C019 .....	776		
C105 .....	246		
C160 .....	589		
<b>Mexico</b>			
C029 .....	247		
C090 .....	354		
C111 .....	500		
C150 .....	590		
C155 .....	736		
C182 .....	355		
<b>Mongolia</b>			
C111 .....	500		
C138 .....	357		
<b>Morocco</b>			
C029 .....	248		
C094 .....	688		
C105 .....	249		
C138 .....	359		
C182 .....	362		
<b>Mozambique</b>			
C105 .....	249		
C138 .....	364		
C144 .....	525		
C182 .....	366		
Submission to the competent authorities .....	852		
<b>Myanmar</b>			
C019 .....	776		
C026 .....	689		
C029 .....	250		
C087 .....	128		
<b>Namibia</b>			
C029 .....	255		
C182 .....	368		
<b>Nepal</b>			
C029 .....	255		
C138 .....	369		
C144 .....	525		
C182 .....	370		
<b>Netherlands</b>			
C094 .....	689		
C097 .....	794		
C102 .....	777		
C131 .....	690		
<b>New Caledonia (France)</b>			
C111 .....	467		
C115 .....	729		
<b>New Zealand</b>			
C032 .....	815		
C182 .....	373		
<b>Nicaragua</b>			
C030 .....	711		
C078 .....	376		
C100 .....	501		
C111 .....	502		
<b>Niger</b>			
C029 .....	257		
C081 .....	592		
C102 .....	777		
C105 .....	258		
C138 .....	376		
C148 .....	740		
C182 .....	377		
Submission to the competent authorities .....	852		
<b>Nigeria</b>			
C087 .....	129		
C098 .....	131		
C105 .....	258		
C111 .....	502		
C123 .....	380		
C138 .....	381		
C144 .....	525		
Submission to the competent authorities .....	852		
<b>Norway</b>			
C094 .....	690		
C129 .....	592		
<b>Pakistan</b>			
C018 .....	778		
C029 .....	259		
C081 .....	593		
C087 .....	132		
C098 .....	136		
Submission to the competent authorities .....	852		
<b>Panama</b>			
C081 .....	595		
C087 .....	138		
C088 .....	646		
C094 .....	691		
C098 .....	139		
C100 .....	502		
C111 .....	503		
C122 .....	646		
<b>Papua New Guinea</b>			
C098 .....	141		
Submission to the competent authorities .....	853		
<b>Paraguay</b>			
C029 .....	261		
C077 .....	383		
C078 .....	383		
C079 .....	384		
C081 .....	596		
C087 .....	141		
C095 .....	692		
C098 .....	142		
C169 .....	835		
<b>Peninsular Malaysia (Malaysia)</b>			
C019 .....	774		
<b>Peru</b>			
C029 .....	263		

C071.....	804	C081.....	600
C087.....	143	C087.....	158
C098.....	144	C094.....	696
C111.....	504	C098.....	159
C169.....	838	C100.....	506
Submission to the competent authorities.....	853	C111.....	506
<b>Philippines</b>		C138.....	389
C087.....	145	Submission to the competent authorities.....	853
C090.....	384	<b>Saint Kitts and Nevis</b>	
C094.....	692	C098.....	160
C097.....	795	Submission to the competent authorities.....	853
C098.....	148	<b>Saint Lucia</b>	
C105.....	265	C087.....	160
<b>Plurinational State of Bolivia</b>		C098.....	161
C081.....	544	Submission to the competent authorities.....	853
C100.....	428	<b>Saint Vincent and the Grenadines</b>	
C111.....	429	C087.....	161
C128.....	748	C098.....	161
C129.....	544	Submission to the competent authorities.....	853
C131.....	673	<b>Samoa</b>	
C169.....	821	C098.....	162
Submission to the competent authorities.....	846	Submission to the competent authorities.....	854
<b>Poland</b>		<b>San Marino</b>	
C081.....	597	C160.....	601
C087.....	150	<b>Sao Tome and Principe</b>	
C095.....	693	C017.....	778
C098.....	151	C018.....	779
C122.....	647	C081.....	602
<b>Portugal</b>		C087.....	162
C006.....	384	C088.....	650
C077.....	385	C098.....	163
C078.....	386	C100.....	507
C098.....	152	C111.....	507
C102.....	778	C144.....	526
C131.....	693	C159.....	650
C158.....	669	Submission to the competent authorities.....	854
<b>Republic of Korea</b>		<b>Sarawak (Malaysia)</b>	
C019.....	773	C019.....	775
C111.....	496	<b>Saudi Arabia</b>	
C131.....	686	C029.....	268
C144.....	523	C111.....	508
<b>Republic of Moldova</b>		<b>Senegal</b>	
Submission to the competent authorities.....	852	C087.....	163
<b>Romania</b>		C122.....	651
C001.....	712	C182.....	390
C087.....	153	<b>Serbia</b>	
C095.....	695	C087.....	164
C098.....	153	C098.....	165
C122.....	649	C131.....	696
<b>Russian Federation</b>		C144.....	526
C029.....	266	C187.....	741
C081.....	597	<b>Seychelles</b>	
C087.....	156	C087.....	167
C098.....	157	C098.....	167
C105.....	267	Submission to the competent authorities.....	854
C111.....	504	<b>Sierra Leone</b>	
C126.....	808	C017.....	779
C138.....	387	C029.....	269
C182.....	388	C088.....	652
Submission to the competent authorities.....	853	C094.....	697
<b>Rwanda</b>		C095.....	697
C062.....	741	C098.....	168

C101 .....	713	C098.....	182
C111 .....	510	C100.....	512
C119 .....	742	C105.....	275
C125 .....	808	Submission to the competent authorities.....	855
C144 .....	527	<b>Tajikistan</b>	
Submission to the competent authorities .....	854	Submission to the competent authorities.....	855
<b>Slovakia</b>		<b>Thailand</b>	
C001 .....	713	C019.....	779
C122 .....	652	C029.....	277
<b>Slovenia</b>		C105.....	279
C097 .....	796	C122.....	656
C098 .....	168	C182.....	392
C143 .....	797	<b>The former Yugoslav Republic of Macedonia</b>	
<b>Solomon Islands</b>		C098.....	186
C081 .....	602	Submission to the competent authorities.....	855
Submission to the competent authorities .....	854	<b>Timor-Leste</b>	
<b>Somalia</b>		C098.....	187
Submission to the competent authorities .....	854	<b>Togo</b>	
<b>South Africa</b>		C098.....	187
C087 .....	168	C138.....	395
<b>Spain</b>		C182.....	396
C029 .....	269	Submission to the competent authorities.....	855
C088 .....	653	<b>Trinidad and Tobago</b>	
C094 .....	697	C087.....	187
C098 .....	169	C098.....	188
C114 .....	808	C182.....	398
C122 .....	653	<b>Tunisia</b>	
C131 .....	698	C087.....	188
C158 .....	670	C122.....	658
<b>Sri Lanka</b>		<b>Turkey</b>	
C081 .....	602	C026.....	701
C087 .....	169	C029.....	280
C098 .....	170	C081.....	606
C100 .....	511	C087.....	190
C105 .....	270	C094.....	701
<b>Sudan</b>		C095.....	701
C026 .....	699	C098.....	191
C029 .....	272	C099.....	702
C081 .....	604	C100.....	512
C095 .....	700	C105.....	281
C098 .....	172	C111.....	513
C105 .....	274	C158.....	671
C122 .....	655	<b>Turkmenistan</b>	
Submission to the competent authorities .....	855	Submission to the competent authorities.....	856
<b>Suriname</b>		<b>Uganda</b>	
C094 .....	700	C017.....	780
C118 .....	779	C026.....	702
Submission to the competent authorities .....	855	C029.....	283
<b>Swaziland</b>		C081.....	608
C081 .....	605	C098.....	193
C087 .....	173	C105.....	283
C098 .....	175	C122.....	658
<b>Sweden</b>		C144.....	527
C087 .....	176	C182.....	399
C098 .....	179	Submission to the competent authorities.....	856
C122 .....	655	<b>Ukraine</b>	
C152 .....	817	C087.....	193
C158 .....	670	C095.....	703
<b>Switzerland</b>		C098.....	194
C098 .....	180	C122.....	660
<b>Syrian Arab Republic</b>		Submission to the competent authorities.....	856
C087 .....	181		

<b>United Arab Emirates</b>			
C081 .....	610	C105 .....	286
C105 .....	283	C182 .....	405
C138 .....	401	Submission to the competent authorities .....	856
C182 .....	401	<b>Vanuatu</b>	
<b>United Kingdom</b>		Submission to the competent authorities .....	856
C087 .....	195	<b>Viet Nam</b>	
C097 .....	798	C081 .....	615
C098 .....	196	<b>Yemen</b>	
C122 .....	661	C081 .....	616
<b>United Republic of Tanzania</b>		C087 .....	211
C029 .....	276	C094 .....	706
C087 .....	183	C098 .....	212
C098 .....	184	C111 .....	516
<b>United States</b>		C131 .....	706
C105 .....	285	C138 .....	410
C182 .....	403	<b>Zambia</b>	
<b>Uruguay</b>		C029 .....	288
C087 .....	197	C087 .....	213
C094 .....	704	C095 .....	706
C097 .....	799	C098 .....	214
C098 .....	199	<b>Zimbabwe</b>	
C121 .....	780	C087 .....	215
C129 .....	611	C098 .....	217
C181 .....	662	C105 .....	289
<b>Uzbekistan</b>		C140 .....	668
C098 .....	201	C159 .....	664



## 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.

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<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., 2012.

<sup>2</sup> Reports are requested every three years for the so-called fundamental Conventions and governance Conventions, and every five years for other Conventions. Reports have been due for groups of Conventions according to subject matter.

## **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 by the application of a particular Convention by a member State. These observations are reproduced in the annual report of

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

<sup>4</sup> There are currently 18 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.



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 labour relations and collective bargaining in the public service. Pursuant to the decision taken by the Governing Body at its 307 Session (March 2010), 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 NORMLEX database accessible via <http://www.ilo.org>.

<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 has held, at each of its sessions since 2000, 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.

## ***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.

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

<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, 101st Session, Geneva, 2012.

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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 83rd Session in Geneva from 21 November to 7 December 2012. 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 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 CATON (Panama), Mr Rachid FILALI MEKNASSI (Morocco), Mr Abdul G. KOROMA (Sierra Leone), Mr Dierk LINDEMANN (Germany), Mr Pierre LYON-CAEN (France), Ms Elena MACHULSKAYA (Russian Federation), Mr Vitit MUNTARBHORN (Thailand), Ms Rosemary OWENS (Australia), Mr Francisco PÉREZ DE LOS COBOS ORIHUEL (Spain), 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 Ruma Pal (India), who had been a member of the Committee since 2006, has submitted her resignation. The Committee expresses its deep appreciation for the outstanding manner in which Ms Pal has carried out her duties during her six years of service on the Committee and, in particular, commends her warmly for the excellent way in which she has carried out her duty as Chairperson of the Subcommittee on Working Methods for the past two years.

4. During its session, the Committee welcomed Mr Lindemann and Mr Pérez De Los Cobos Orihuel, nominated by the Governing Body at its 313th Session (March 2012).

5. Mr Yokota continued his mandate as Chairperson of the Committee and the Committee re-elected Mr Barrow as Reporter. As Mr Yokota did not wish to seek a second mandate as Chairperson, the Committee elected Mr Koroma as Chairperson for its next session.

### **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 and 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> From 2007 to 2011, the subcommittee met at each of the Committee's sessions.<sup>4</sup>

7. This year, a new subcommittee on the streamlining of treatment of certain reports was established. This subcommittee met twice before the beginning of the work of the Committee and examined all the comments related to repetitions (269 observations and 462 direct requests – which are comments repeating what had been said previously by the Committee), as well as the general observations and direct requests. The subcommittee then presented, for adoption in the plenary, its report to the Committee of Experts and drew attention to the most important issues which had been raised during its examination. The approach taken by the subcommittee has enabled the Committee of Experts to save precious time for the examination of individual observations and direct requests regarding ratified Conventions and it was suggested that it should be reconvened every year.

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

8. A spirit of mutual respect, cooperation and responsibility has consistently prevailed over the years in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts has always taken 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 with regard to specific matters concerning the way in which States fulfil their standards-related obligations. Moreover, the Committee has paid in recent years close attention to the comments on its working methods that have been made by the members of the Committee on the Application of Standards and the Governing Body.

9. In this context, the Committee once more welcomed the participation of Mr Yokota as an observer in the general discussion of the Committee on the Application of Standards at the 101st Session of the International Labour Conference (June 2012). It noted the decision by the Conference Committee to request the Director-General to renew this invitation for the 102nd Session (June 2013) of the Conference. The Committee of Experts accepted this invitation.

10. The Chairperson of the Committee of Experts invited the Employer Vice-Chairperson (Mr Christopher Syder) and the Worker Vice-Chairperson (Mr Marc Leemans) of the Committee on the Application of Standards at the 101st Session of the International Labour Conference (June 2012) to participate in a special sitting of the Committee at its present session. They both accepted this invitation.

11. This year's special sitting was of particular importance in the light of the events that had taken place during the session of the Conference Committee in June 2012 as well as the subsequent developments, including the informal tripartite consultations in September 2012 and the discussions that took place during the November Session of the Governing Body.

12. During the sitting, the Employer Vice-Chairperson insisted that for his group, this internal dialogue within the ILO's standards supervisory system was of utmost importance for the proper functioning of the system. He stressed that the Employers remained fully committed to preserving and strengthening the cooperation and coordination between the Conference Committee on the Application of Standards and the Committee of Experts.

13. Regarding the issue of the right to strike, he reiterated that the Employers had objected for many years to the view that the right to strike was to be considered to be part of the obligations politically negotiated and agreed by the ILO constituents under Convention No. 87. The Employers had set out on many occasions that a right to strike was not regulated in Convention No. 87 and that the ILO constituents did not agree to the inclusion of the right to strike at the time Convention No. 87 was adopted in 1948. According to the Employers, this was clearly stated in the preparatory work that preceded the adoption of the Convention and the Employers had put forward detailed arguments in the past showing that in considering all applicable rules of interpretation, a right to strike could not be read into Convention No. 87. In this regard, the Employers regretted that in the context of the 2012 General Survey on the eight fundamental Conventions, the Committee of Experts had included nearly 20 pages on their view that Convention No. 87 contained an inherent right to strike.

14. The Employer Vice-Chairperson recalled that the role of the Committee of Experts was first mandated at the ILC in 1926 and that it had been explicitly stated at the time that the functions of this new committee would be entirely technical and that the Committee of Experts would have no judicial capacity, nor would it be competent to give interpretations of the provisions of Conventions or to decide in favour of one interpretation rather than another. Further explanation was provided on the role of the Committee of Experts at the ILC in 1947 when it was stated that the supervisory machinery in question consisted of a Committee of Experts appointed by the Governing Body for the purpose of carrying out a preliminary examination of the annual reports of governments. The Employers were of the view that

<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; General Report, 81st Session (November–December 2010), paras 6–13; General Report, 82nd Session (November–December 2011), paras 6–12.

nothing had changed since then and that the decisions of 1926 and 1947 remained the guiding principles on the role and mandate of the Committee of Experts. Therefore, the fact that the Employers inside the Conference Committee on the Application of Standards had consistently opposed the CEACR's view on the right to strike should not be construed as the view of external opposition but rather as evidence that there had never been an agreement inside the ILO on the issue of the right to strike.

15. Furthermore, the fact that many countries had enshrined a right to strike, together with restrictions on that right was, in the Employers' view, not determinative of the proposition that Convention No. 87 was the source of that right. To the contrary, it would be far more supportive of a view that countries had rightly found it necessary to regulate this important issue themselves in the face of a lack of clear and explicit guidance from an agreed source. Citing national practice as a basis for interpreting an unstated right into an international document did not, in the Employers' view, advance the argument that Convention No. 87 was the source of the right to strike. In conclusion on this point, the Employer Vice-Chairperson indicated that with regard to Convention No. 87, the Committee of Experts had taken a role more akin to the role of the Conference Committee on the Application of Standards than the advisory role the experts were originally assigned in 1926. It appeared that the Committee of Experts had developed and maintained views concerning the right to strike that should have been the subject of tripartite policy debates. In order to move forward with this issue, he recalled that the Employers had expressed their willingness to contribute to a balanced solution in this regard and had proposed, during the 2012 November session of the Governing Body, to have a proper tripartite discussion on the right to strike during the International Labour Conference. Such a discussion would be meant to determine if and to what extent there was common ground amongst ILO constituents for global standard-setting on the right to strike. He once again requested the Committee of Experts to reconsider its position on the right to strike and to immediately suspend any references to this right in future reports until a tripartite discussion had taken place on the right to strike.

16. Regarding the issue of the mandate of the Committee of Experts and more precisely the legal status of its views and observations, the Employer Vice-Chairperson underlined that these were not clearly and precisely set forth in the Committee's report, which could lead to misunderstandings outside the ILO that they were approved by the ILO's tripartite constituents or were legally binding. As stated under the point regarding the right to strike, it was the Employers' understanding that the Governing Body had never decided to amend the stated terms of reference of the Committee of Experts to expressly include the interpretation of international labour standards. In addition, it could not be the Governing Body's intention to change those terms of reference since the ILO Constitution provided that the authority to interpret ILO Conventions was vested with the International Court of Justice, which meant that the Constitution would need to be amended first. Based on this understanding, the Employers were of the view that what needed to be mentioned in all of the Committee of Experts' reports was that their views and observations were meant to provide a basis for the supervisory work of the Conference Committee on the Application of Standards, they had not been approved by the tripartite bodies of the ILO and that these views were not legally authoritative interpretations and not legally binding for ratifying countries. In view of the above, the Employers respectfully requested the Committee of Experts to consider this issue with a view to clarifying its mandate and the legal status of its views in a clear and concise manner in all of its future reports. This clarification should be made at a visible place, preferably on the first pages in the reports.

17. Following exchanges with the Committee of Experts, the Employer Vice-Chairperson acknowledged that a certain degree of interpretation by the Experts was inevitable when the provisions of a Convention were not clear, but insisted that the main issue was when this rule of interpretation was extended into the development of policy considerations which were the sole domain of the ILO tripartite constituents.

18. While the Employer Vice-Chairperson very much welcomed the opportunity to clarify the respective roles of the Conference Committee on the Application of Standards and the Committee of Experts through this special sitting, he stressed that this dialogue with the two committees should also be extended in terms of participants and time. He suggested that rather than this limited exchange between the two spokespersons of the Conference Committee and the members of the Committee of Experts, the Office should organize one-day consultations, outside the meeting of the Committee of Experts', between the CEACR and a number of Conference Committee Employer and Worker members nominated by the two groups and assisted by ACT/EMP and the IOE as well as ACTRAV and the ITUC respectively. Finally, he expressed the view that in the process which was currently underway in the Governing Body to move forward on all these issues, one element that was missing was the involvement of the members of the Committee of Experts in the discussion of their mandate.

19. For its part, the Worker Vice-Chairperson emphasized that the present meeting was an occasion that was valued by his Group each year as an opportunity to reaffirm its confidence in the Committee of Experts, and also in the other supervisory bodies on the application of ILO standards, and particularly the Conference Committee on the Application of Standards and the Committee on Freedom of Association, both of which were of tripartite composition. Those two bodies had also contributed over the years to developing principles, beyond the framework of the ILO Constitution, which were of undeniable value for workers, employers and governments, particularly by offering security for key concepts in the context of international labour law. Those concepts were valid because they had their origins in joint tripartite analysis. Moreover, the reports of the supervisory bodies constituted a reference point on standards which ensured stability and social peace in member States, not only in relation to the social partners and the world of enterprise, but also between member States themselves, with a view to avoiding unfair competition based on social dumping.

20. With regard to the question of the mandate of the Committee of Experts, the Worker Vice-Chairperson recalled that as early as 1928 the Conference Committee on the Application of Standards had considered, after noting that the Committee of Experts was confining itself to examining the compliance of national laws and regulations with international Conventions, that its analysis of the subject should not be limited to assessing the concordance of the provisions of national laws and regulations with those of Conventions, but should also go more deeply into the issue of the effective application of the Conventions. He emphasized that the role of the Committee of Experts was fundamental and that its work was an essential and permanent instrument in improving the application of standards. That role consisted of preparing, under unimpeachable conditions of scientific rigour, independence and objectivity, the work that would be taken up by the Conference Committee on the Application of Standards with a view to ensuring that effect was given to standards in law and practice.

21. The Worker Vice-Chairperson stated that the work of the Conference Committee on the Application of Standards, through the examination of individual cases, was another fundamental aspect of the supervisory system. Its examination was based on the work of the Committee of Experts, as well as the tripartite examination of individual cases. The role of the Committee of Experts was therefore to enter into dialogue with governments through its comments. But, however important that role might be, the Committee of Experts was only one element of the omnipresent tripartite involvement in supervising the application of standards. Indeed, the Governing Body, with its tripartite composition, was a constitutional body which had a determining role to play at the various levels, for example by first approving the questionnaires under articles 19 and 22 of the Constitution. Moreover, the work of the Conference Committee on the Application of Standards could only be valid with the total involvement of employers, workers and governments, not only in relation to reporting obligations, but also through the comments made by the social partners under article 23(2) of the Constitution. The Committee of Experts therefore worked in a very precise framework and its mandate, which was the result of an evolutionary process overseen by the Governing Body, had not been left to its sole discretion.

22. The Worker Vice-Chairperson also welcomed the fact that the informal tripartite consultations held in September 2012 had given rise to the promise that working methods would be adopted that should ensure the possibility of serene and effective work at the next session of the Conference Committee on the Application of Standards in June 2013.

23. With reference to the issue of the right to strike, the Worker Vice-Chairperson warned against the desire to weaken inter-occupational and sectoral social dialogue, which appeared to have its roots within the European Union. In that respect, he emphasized that it would be difficult for the Workers' Group to accept a method of work based on a question of principle arising out of the differences of views concerning the relationship that existed between the right to strike and Convention No. 87. The reasoning put forward by the Employers, calling for the right to strike only to be addressed at the national level, was designed to weaken the trade union movement, social dialogue and the right to collective bargaining. But all of those rights were linked in their spirit to those negotiated in Conventions Nos 87 and 98.

24. The Worker Vice-Chairperson stated that the ILO supervisory bodies recognized the right to strike and considered it to be a fundamental instrument available to workers' organizations for the defence of their economic and social interests. In its 1959 General Survey the comments of the Committee of Experts had been in line with such recognition, and it currently considered the right to strike to be an essential corollary of the right to organize. That was also the opinion of the Committee on Freedom of Association, which had recognized such a right in 1952. It should also be noted that 137 countries had ratified Convention No. 87 since 1952, and that 115 of those ratifications had been registered after the publication of the 1959 General Survey on freedom of association, which clearly implied recognition of the exercise of the right to strike. The Conference Committee on the Application of Standards also recognized the right to strike. However, those bodies considered that it was not an absolute right and that it could be subject to certain restrictions, or even prohibited. The Committee of Experts had therefore never gone beyond its mandate in formulating its principles on the right to strike. Those principles were in line with reality, with the provisions of other international instruments that referred to the right to strike and with the decisions and principles followed by other supervisory machinery.

25. Finally, in reply to the proposal put forward by the Employers regarding the inclusion of a caveat at the beginning of all future reports of the CEACR, the Worker Vice-Chairperson voiced his strong opposition to the inclusion of such a caveat.

26. The Committee very much welcomed the frank and constructive interventions of both Employer and Worker Vice-Chairpersons. Concerning its mandate, the Committee recalled that, since 1947, and during the past 50-plus years, it had regularly expressed its views on its mandate and methods of work. Since 2001, it had done so even more thoroughly through the efforts of its subcommittee on working methods. The Committee recalled three elements of particular relevance in this regard: (i) it had repeatedly stressed its status as an impartial, objective, and independent body, with members appointed by the tripartite Governing Body in their personal capacity precisely because of that impartial and independent status; (ii) it had regularly clarified that, while its terms of reference did not authorize it to give definitive interpretations of Conventions (competence to do so being vested in the International Court of Justice (ICJ)), in order to carry out its mandate of evaluating and assessing the application and implementation of Conventions, it had to consider and express its views on the legal scope and meaning of the provisions of these Conventions; and (iii) as from at least the



1950s, it had expressed its views on the meaning of specific ILO instruments in terms that inevitably reflected an interpretive vocabulary.

27. Reviewing the position of the Employers' group over the years, the Committee stressed that, historically, that group had accepted the Committee's interpretive role as part of its mandate. For instance, the Committee recalled that, during the 1987 Conference Committee on the Application of Standards, addressing concerns raised by certain governments, the Employers' spokesperson had "rejected the argument that the CEACR had gone beyond its terms of reference" and both the Employers' and Workers' spokespersons "supported the CEACR's current methods of work." In the 1993 Conference Committee, the Employers' group had remarked that "disagreements over the method and substance of interpretations arose in only a small proportion of the vast number of comments made over the years by the Committee of Experts". More recently, during the 2011 Conference Committee, the Employers' group had not responded to the detailed discussion of the interpretive methods that the CEACR had presented in paragraphs 10–12 of its General Report, which discussed in considerable detail: (a) the logical necessity of interpreting Conventions in order to fulfil its mandate, (b) the necessity that its work remain committed to independence, objectivity, and impartiality, and (c) that the Committee constantly bore in mind all different methods of interpreting treaty law, especially the Vienna Convention.

28. The Committee further stressed that its mandate derived from three main principles. First, assessment and evaluation of textual meaning was logically integral to the application of ratified Conventions. In this regard, the Committee noted that it needed to bring to the Conference Committee's attention: (i) any national laws or practices not in conformity with the Conventions, which inevitably required the evaluation and thus, a certain degree of interpretation, of the national legislation and the text of the Convention; and (ii) in conformity with its working methods, the cases of progress in the application of standards, which also required a degree of interpretation. Second, the equal treatment and uniformity of the application of Conventions assured predictability. The Committee highlighted in this regard that its approach to examining the meaning of Conventions also prioritized achieving equal treatment for States and uniformity in practical application. This emphasis was essential to maintaining principles of legality, which encouraged governments to accept its views on the application of a Convention and, in this manner, promoted a level of certainty needed for the proper functioning of the ILO system. Third, the Committee stressed that its composition, i.e., independent persons with distinguished backgrounds in the law and direct experience of the different national legal systems to which Conventions were applied, helped to ensure a broad acceptance within the ILO community of its views on the meaning of Conventions.

29. The Committee acknowledged the Employers' concerns expressed by the Employer Vice-Chairperson at the June 2012 Conference that its observations were "being viewed by the outside world as a form of soft law labour standards jurisprudence". However, the Committee noted that the world outside of the ILO was not its designated or intended audience. Rather, the Committee directed its non-binding opinions and conclusions to governments, social partners, and the Conference Committee pursuant to its well-settled role in the ILO supervisory structure. While aware that its guidance was taken seriously in certain specific settings, both by domestic courts and international tribunals, the Committee considered that this reflected respect for its independent and impartial nature and for the persuasive value of its non-binding analyses and conclusions. The Committee recalled that those analyses or conclusions could only become authoritative in any "binding" sense if the international tribunal, or instrument, or the domestic court independently established them as such.

30. Regarding its working methods and particularly its examination of governments' reports and comments of social partners, the Committee recalled that it was relying exclusively on written evidence and that there were no oral hearings or scope for oral arguments. While the Committee took due note of the well documented and constructive comments of the social partners, it would welcome receiving more of such comments from the employers to better reflect their views. The Committee underscored the substantial individual and collective work it carried out in reviewing the application of Conventions which further benefited from an intensive exchange of views from a diversity of legal, social and cultural backgrounds. Finally, the Committee recalled that its mandate must by necessity be understood within the framework of the ILO Constitution which firmly anchors the aims and objectives of the Organization as being the elimination of injustice, hardship and privation and the fostering of social justice as the means for ensuring universal and lasting peace.

31. On the matter of the right to strike, the Committee of Experts welcomed the frank discussion of issues that enabled it to address directly a number of points. In the first instance, there appeared to remain the challenge as to whether there was a right to strike at all under Convention No. 87. The Committee indicated that it would take into account the arguments raised by the Employers, although the Committee considered that it had already addressed these arguments in detail in its 2012 General Survey. The Committee recognized that the Employer Vice-Chairperson appeared to make a distinction between interpretive application of the Convention and what the Employers felt was making policy, and gave particular examples of such policy extension. The Committee indicated, however, that once it had decided in 1959 that the Convention included the right to strike, the Committee was faced with the need to determine what the acceptable restrictions were, rather than leaving it as an absolute right. The Committee did this on a case-by-case basis over the years, looking at a country's law and practice, bearing in mind the information provided to it, and taking into account national circumstances, while ensuring equal treatment and universal application. In order to make this assessment, the Committee encouraged, and continues to encourage, all parties, including the employers' organizations, to make use of article 23(2) of the Constitution in order to provide relevant information for its reflection. In so far as the Committee's reliance on the

decisions of the Committee on Freedom of Association was concerned, the Committee recalled that it made its own decisions. It takes into account the decisions of the Committee on Freedom of Association but does not justify its observations on the basis of those decisions. Moreover, the Committee recalled several examples of complaints or comments submitted by international and national employers' organizations to the Committee on Freedom of Association and the CEACR in which the employers' organizations requested both supervisory bodies to make statements regarding the need to set limits to the exercise of the right to strike when, in their opinion, the legislative texts contained objectionable provisions.

32. The Committee further emphasized that, contrary to the social partners who often defend conflicting interests, and therefore had to negotiate, it did not defend interests and, although there may be differences between the experts when examining the application of Conventions, they did not negotiate between themselves when preparing their comments. The experts sought legal truth, completely objectively and impartially.

### ***The Committee's views regarding its mandate***

33. The Committee is aware that, as a result of the informal tripartite consultation in September 2012, the tripartite constituencies have requested that the Office prepare an information document on the mandate of the Committee of Experts for the 317th Session (March 2013) of the Governing Body. Following its meeting with the Vice-Chairpersons of the Committee on the Application of Standards, the Committee of Experts also has an increased understanding of the concerns expressed by the Employers and of the positions taken by the Workers with regard to its mandate. These concerns and positions were ably presented by the two Vice-Chairpersons at the meeting of the Committee on 1 December 2012. The Committee has decided to put forward the following considerations in the spirit of assisting the ILO constituents in their understanding of the Committee's work. The Committee wishes to draw attention to four principal factors.

- (a) *Logically integral to application.* The terms of reference of the Committee of Experts call for it to examine a range of reports and information in order to monitor the application of Conventions and Recommendations. In fulfilling this responsibility, the Committee must bring to the attention of the Conference Committee on the Application of Standards any national laws or practices not in conformity with the Conventions, including the severity of certain situations. This logically and inevitably requires an assessment, which in turn involves a degree of interpretation of both the national legislation and the text of the Convention.

Further, in conformity with longstanding working methods, the Committee of Experts has identified over 3,000 cases of progress (noting with *satisfaction*) since 1964, which again logically requires an interpretive judgment that a government's change in law or practice has given fuller effect to a ratified Convention as it has been construed by the Committee.

- (b) *Equal treatment and uniformity assure predictability in application.* The Committee's approach to examining the meaning of Conventions stresses due regard for achieving equality of treatment for States and uniformity in practical application. This emphasis is essential to maintaining principles of legality, which encourage governments to accept the Committee of Experts' views on application of a Convention. In this manner, the Committee can promote a level of certainty needed for the proper functioning of the ILO system.
- (c) *Composition.* The Committee of Experts' views on the meaning of Conventions are broadly accepted because the Committee is composed of independent persons who have distinguished backgrounds in the law and direct experience of the different national legal systems for which they must evaluate the application of the Conventions. The Committee's independence is importantly a function of its members' occupations, principally as judges from national and international courts and as professors of labour law and human rights law. This independence is also attributable to the means by which members are selected. They are not selected by governments, employers, or workers, but rather by the Governing Body upon recommendation of the Director-General. The Committee's combination of independence, experience, and expertise continues to be a significant further source of legitimacy within the ILO community.
- (d) *Consequences.* Governments rely on the valid and generally recognized nature of the Committee of Experts' observations, direct requests, and General Surveys to help structure their conduct in law and practice. If governments were to view the Committee's positions as somehow discounted or of less certain value, some would feel freer to ignore its requests or invitations to comply. This would inevitably undermine orderly monitoring and predictable application of the standards – the precise result that the Committee of Experts mandate was established and then extended in order to prevent.

In addition, the Conference Committee, the Committee on Freedom of Association, and the Governing Body also rely on the Committee of Experts framework of opinions about the meaning of the provisions of the Conventions in the course of the applications process. Without this independent role, the supervisory system would lose a vital element of impartiality and objectivity, an element that has been central to the monitoring system for 85 years.

## Prior statements from the CEACR and the Employers regarding the Committee's mandate

34. The Committee believes it may be useful to review certain past and recurrent perceptions with regard to its mandate, as expressed before the Conference.

- (a) *Statements by the CEACR.* For more than 50 years, the Committee has regularly expressed its views on its mandate and methods of operation. Since 2001, it has done so even more thoroughly through the efforts of its subcommittee on working methods. Three elements are of special relevance here:

First, the Committee has repeatedly stressed its status as an impartial, objective, and independent body, with members appointed by the Governing Body in their personal capacity precisely because of that impartial and independent status.<sup>5</sup>

Second, the Committee has regularly made clear that, while its terms of reference do not authorize it to give definitive interpretations of Conventions – competence to do so being vested in the International Court of Justice (ICJ) under article 37 of the ILO Constitution – in order to carry out its mandate of evaluating and assessing the application and implementation of Conventions, it must consider and express its views on the legal scope and meaning of the provisions of these Conventions.<sup>6</sup>

Third, at least as far back as the 1950s, the Committee has expressed its views on the meaning of specific ILO instruments in terms that inevitably reflect an interpretive vocabulary.

- (b) *Statements from the Employers' group.* Over the past 25 years, the Employers group has often made clear its support for or endorsement of the Committee's role in construing Convention text as a key element of the supervisory mechanism.

Thus, for example, in 1986 in the Conference Committee on the Application of Standards, "the Employers' members were of the opinion that the criticism which had been expressed [by certain governments] with respect to the supervisory machinery attested to its effectiveness. They completely rejected the idea of dismantling or weakening the supervisory system. In their opinion, the arguments put forth against this machinery were unfounded. This was particularly the case in regard to comments critical of the supervisory machinery because it allegedly constituted an interference in internal affairs of States. To the contrary, it was a question of knowing whether a member State intended to comply with obligations it had assumed. ... This procedure was clear, unambiguous, fair, and above all necessary" (paragraph 36, page 31/8).<sup>7</sup>

Again in 1987, the Employers responded to arguments by the USSR and other Eastern European countries (paragraph 26) that the Committee of Experts had gone beyond its 1926 terms of reference, which were purely technical, by converting itself into "a kind of supra-national tribunal, interpreting national laws and Conventions" although such interpretation was the responsibility of the national courts or the ICJ. The Employers' spokesperson "rejected the argument that the Committee of Experts had gone beyond its terms of reference" (paragraph 27) and both the Employers' and Workers' spokespersons "supported the Committee's current methods of work" (paragraph 32).<sup>8</sup>

While in 1990, the Employers criticized a statement in the Committee's report that they viewed as saying in substance that competence to interpret Conventions absent an ICJ submission rests solely with the Committee (paragraph 22), following extended discussion involving workers and governments as well, the Employers emphasized their view of the Vienna Convention as "the appropriate – in fact the only – yardstick to be used in interpreting ILO Conventions. It was this yardstick that *they invited the Committee to use in their interpretation of international labour standards*" (paragraph 30, emphasis added).<sup>9</sup>

In 1993, the Employers remarked that "disagreements over the method and substance of interpretations arose in only a small proportion of the vast number of comments made over the years by the Committee of Experts" (paragraph 21).<sup>10</sup>

<sup>5</sup> ILC, Report III (Part IV), 1957, para. 15; ILC, Report III (Part IV), 1967, para. 25; ILC, Report III (Part 4A), 1977, para. 12; ILC, Report III (Part 4A), 1987, para. 19; ILC, 1990, para. 6; ILC, Report III (Part 4A), 1991, para. 12; ILC, Report III (Part IA), 2006, p. 2; ILC, Report III (Part IA), 2011, para. 10.

<sup>6</sup> ILC, CEACR, Report III (Part 4A), 1977, para. 32; ILC, CEACR, Report III (part 4A), 1987, para. 21; ILC, CEACR, Report III (Part 4A), 1990, para. 7; ILC, Report III (Part 4A), 1991, para. 9; ILC, CEACR, Report III (Part IA), 2011, para. 11.

<sup>7</sup> ILC, *Provisional Record* No. 31: Report of the Committee on the Application of Standards, 72nd Session, Geneva, 1986, p. 31/1.

<sup>8</sup> ILC, *Provisional Record* No. 24 (Part 1): Report of the Committee on the Application of Standards, 73rd Session, Geneva, 1987, p. 24/1.

<sup>9</sup> ILC, *Provisional Record* No. 27 (Part 1): Report of the Committee on the Application of Standards, 77th Session, Geneva, 1990, p. 27/1.

<sup>10</sup> ILC, *Provisional Record* No. 25 (Part 1): Report of the Committee on the Application of Standards, 80th Session, Geneva, 1993, p. 25/1.

In 2010, the Employers again made clear that “they were not questioning the valuable role of the Committee of Experts but only certain of its interpretations” (paragraph 75).<sup>11</sup>

## ***The non-binding nature of CEACR opinions and recommendations***

35. (a) In stating that its views are to be considered as valid and generally recognized (absent contradictory ruling from the ICJ), the Committee is not saying that it regards its views as having any *res judicata* or comparable effect. The Committee does not regard itself as a court of law. Indeed, it has been consistently clear that its formulations of guidance – presented as opinions or recommendations in the context of observations, direct requests, and General Surveys – are not binding. Rather, the persuasive validity of the Committee’s formulations for member countries, social partners, the Conference Committee, and others within the ILO stems from: (1) their logical relation to the standards application process; (2) the equal treatment and uniformity that accompanies their implementation; (3) the quality of their reasoning; and (4) the recognized independence and expertise of the Committee as a whole.

(b) In this respect, the Committee’s guidance is part of the so-called international law landscape. Like the work of independent supervisory bodies created within other UN organizations addressing human rights and labour rights,<sup>12</sup> the Committee’s non-binding opinions or conclusions are intended to guide the actions of ILO member States by virtue of their rationality and persuasiveness, their source of legitimacy (by which is meant the independence, experience, and expertise of the members), and their responsiveness to a set of national realities including the informational input of the social partners. At the same time, the Committee observes that it is only before the ILO supervisory machinery that the social partners can bring forward their concerns relating to the application of Conventions.

## ***Proposed addition of a caveat to the Committee’s General Surveys and Reports***

36. The Committee has considered the Employers’ position that some form of caveat or disclaimer should be prominently featured in Committee documents, stating that Committee interpretations are not authoritative and hence not legally binding for ratifying countries, as well as the Workers’ position that such a caveat or disclaimer should not be included. The Committee understands and respects the views of both constituents and wishes to clarify its own position on this matter.

- (a) The Committee believes that such a caveat or disclaimer is not necessary. As noted earlier in this General Report, the Committee repeatedly states with regard to its terms of reference, both in its general reports and in other settings, that its opinions are non-binding. The Committee includes a similarly unambiguous statement as part of the preliminary portion of its 2013 General Survey and will continue with this practice in future years.
- (b) The Committee believes that adding the caveat or disclaimer proposed by the Employers would interfere in important respects with its independence. The Committee fully appreciates and respects that tripartism carries moral force as well as technical authority within the ILO system. The Committee’s moral authority, however, derives substantially from the fact that, while appointed by the tripartite Governing Body, it has remained an independent and impartial body of experts for 85 years. As mentioned earlier, Committee members are nominated and selected with regard to their independence and objectivity, not their participation in a tripartite framework. That this caveat is being proposed by one group of tripartite constituents, and opposed in principle and in its specific language terms by another group of the tripartite constituents, highlights the risks of attempting to add to the Committee’s own work product.
- (c) In this regard, it bears emphasis that the General Surveys and the report of the Committee under articles 19, 22 and 35 of the Constitution are instruments created by the Committee at the direction and pursuant to the constitutional authority of the Conference. The Committee feels strongly about the views expressed above and believes that it should continue to follow its current practice.

<sup>11</sup> ILC, *Provisional Record* No. 16 (Part 1): Report of the Committee on the Application of Conventions and Recommendations, 99th Session, Geneva, 2010, p. 16/1.

<sup>12</sup> The Committee on Economic, Social and Cultural Rights and the Human Rights Committee have comparable monitoring responsibilities with respect to provisions of their Covenants, based on their impartial and independent expert status.

## 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***

37. 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>13</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.

38. The Committee notes that, during the general discussion of the Conference Committee at the 101st Session of the International Labour Conference (June 2012) and the special sitting in which it examines these cases of serious failure, several members of the Conference Committee emphasized once again 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, 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.

39. The Committee was informed that, pursuant to the discussions of the Conference Committee, the Office had sent special letters to the 58 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.

40. The Committee welcomes the fact that eight countries which had experienced persistent difficulties and which as such had been mentioned in several reports of both Committees have this year fulfilled part of their constitutional obligations in terms of the submission of reports and information due on the application of ratified Conventions.<sup>14</sup> The

<sup>13</sup> GB.306/LILS/4(Rev.), paras 36–42.

<sup>14</sup> Grenada, Guinea, Guinea-Bissau, Guyana, Kyrgyzstan, Nigeria, United Kingdom (St Helena) and Yemen.

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>15</sup>

41. 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.

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

42. 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*

43. 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. This decision was implemented starting with the reports for 2012.

44. 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.

45. 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.

46. 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 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*

47. This year a total of **2,393** reports (under articles 22 and 35 of the Constitution) were requested from governments on the application of Conventions ratified by member States, compared to 3,013 reports last year. At the end of the present session of the Committee, **1,664** reports had been received by the Office. This figure corresponds to **69.53** per cent of the reports requested. Last year, the Office received a total of 2,084 reports, representing 69.01 per cent.

48. In accordance with article 22 of the Constitution, **2,207** reports were requested from governments. Of these, **1,497** had been received by the Office by the end of the present session of the Committee. This figure corresponds to **67.83** per cent of the reports requested (compared to 67.82 per cent last year). The Committee wishes to express its gratitude to the **91** member States, which have submitted all the reports due this year.

49. In accordance with article 35 of the Constitution, **186** reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories. Of these, **167** reports, or **89.78** per cent, had been received by the end of the Committee's session (compared to 82.37 per cent last year).

50. Furthermore, this year, in view of the fact that the Conference Committee on the Application of Standards during its session in June 2012 was not in a position to discuss any of the individual cases which had been enumerated on a preliminary list, and in order to avoid any further disruption of the functioning of the ILO supervisory mechanisms, the

<sup>15</sup> Bahamas, Barbados, Burkina Faso, Cape Verde, Denmark (Greenland), Grenada, Guinea-Bissau, Haiti, Iceland, Ireland, Kazakhstan, Kyrgyzstan, Nigeria, Pakistan, Seychelles, Slovakia, Turkmenistan and United Kingdom (St Helena).

Conference Committee on the Application of Standards requested the governments included in this preliminary list<sup>16</sup> to send a report to the Committee of Experts to be examined at this session.

### **Compliance with reporting obligations**<sup>17</sup>

51. 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 **ten** countries: **Burundi, Chad, Djibouti, Equatorial Guinea, Kiribati, Libya, San Marino, Sao Tome and Principe, Sierra Leone and Somalia**. 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.

52. The Committee urges the governments of these countries to make every effort to supply the reports requested on ratified Conventions. 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**

53. 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.

54. The Committee observes that by **1 September 2012 the proportion of reports received was 36.7 per cent**, compared with 35.1 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, 2008, 2010 and 2011, following a significant decrease in 2009. The Committee is particularly grateful to the **38 countries which provided all the reports due within the time limits** with the information requested.<sup>18</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.

55. Furthermore, the Committee notes that a number of countries sent some or all of the reports **due by 1 September 2011 during the period between the end of the Committee's last session (November–December 2011) and the beginning of the 101st Session of the International Labour Conference (June 2012)**, or even during the Conference. 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 follow this practice over the indicated period are the following: **Algeria, Angola, Bulgaria, Congo, Croatia, Denmark, Eritrea, Fiji, France, France (French Polynesia), Germany, Greece, Guinea, Guyana, Hungary, Iraq, Kenya, Kyrgyzstan, Lebanon, Liberia, Luxembourg, Malaysia, Malta, Mongolia, Nepal, Netherlands (Curaçao), Norway, Panama, Paraguay, Peru, Rwanda, Senegal, Slovakia, Slovenia, Spain, Thailand, Timor-Leste, Tunisia, Uganda, United Kingdom (British Virgin Islands, Falkland Islands (Malvinas)) and Yemen**.

56. 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

<sup>16</sup> **Algeria, Bangladesh, Belarus, Botswana, Cambodia, Canada, China – Hong Kong Special Administrative Region, Colombia, Costa Rica, Cuba, Democratic Republic of the Congo, Dominican Republic, Egypt, Ethiopia, Fiji, Georgia, Greece, Guatemala, Guinea, Guyana, Honduras, Iceland, India, Indonesia, Islamic Republic of Iran, Iraq, Republic of Korea, Kuwait, Malawi, Mauritania, Mauritius, Mexico, Myanmar, Nigeria, Pakistan, Paraguay, Romania, Saudi Arabia, Senegal, Serbia, Spain, Sri Lanka, Swaziland, Syrian Arab Republic, Turkey, United Kingdom, Uruguay, Uzbekistan, Zimbabwe**. Out of these 49 countries, 45 have sent the reports requested.

<sup>17</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) 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>18</sup> **Antigua and Barbuda, Austria, Bahrain, Bosnia and Herzegovina, Cameroon, Cape Verde, China, Colombia, Cuba, El Salvador, Eritrea, Estonia, Fiji, Finland, Gabon, Georgia, Germany, Guatemala, Haiti, India, Israel, Jordan, Myanmar, Netherlands, Philippines, Poland, Romania, Saint Kitts and Nevis, Saint Lucia, Senegal, South Africa, Sweden, The former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, Uzbekistan and Zimbabwe**.

cycle for fundamental and governance Conventions, will facilitate the preparation and sending of reports by member States.

### **Supply of first reports**

57. The Committee notes that 67 of the 101 first reports due on the application of ratified Conventions were received by the time the Committee's session ended, compared to last year when 61 of the 105 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 **nine** member States:

<b>Failure to submit first reports on the application of ratified Conventions</b>	
<b>State</b>	<b>Conventions Nos</b>
Bahamas	– Since 2010: Convention No. 185
Equatorial Guinea	– Since 1998: Conventions Nos 68, 92
Kazakhstan	– Since 2010: Convention No. 167 – Since 2011: Convention No. 185
Kiribati	– Since 2011: Conventions Nos 100, 111, 138, 182
Kyrgyzstan	– Since 2006: Convention No. 184 – Since 2010: Convention No. 157
Nigeria	– Since 2010: Convention No. 185
Sao Tome and Principe	– Since 2007: Convention No. 184
Seychelles	– Since 2007: Conventions Nos 147, 180
Vanuatu	– Since 2008: Conventions Nos 87, 98, 100, 111, 182 – Since 2010: Convention No. 185

58. 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**

59. 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 practice, the Office has written to all the governments which failed to provide such replies requesting them to supply the necessary information. This year, 15 of the governments which were contacted by the Office have provided the information requested.

<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)).



60. This year, there were 387 cases in which no reply was received to comments (concerning 40 countries). There were 537 such cases (concerning 43 countries) last year.

<b>Cases of failure to supply information in reply to comments made by the Committee of Experts</b>	
<b>State</b>	<b>Conventions Nos</b>
Algeria	24, 29, 32, 42, 44, 81, 97, 119, 120, 127, 155
Angola	12, 17, 18, 19, 27, 29, 100, 105, 111
Barbados	26, 87, 94, 95, 97, 98, 100, 102, 105, 108, 111, 115, 118, 128, 144, 147
Burundi	11, 14, 17, 26, 27, 29, 42, 52, 62, 81, 87, 89, 94, 98, 100, 101, 105, 111, 135, 138, 144
Central African Republic	17, 18, 19, 81, 100, 111, 118
Chad	29, 81, 87, 95, 98, 100, 105, 111, 138, 144, 173, 182
Comoros	12, 13, 17, 19, 29, 42, 77, 81, 98, 99, 100, 105, 111, 138, 182
Democratic Republic of the Congo	12, 19, 26, 29, 81, 95, 100, 102, 105, 111, 118, 121, 135, 138, 144, 150, 158
Djibouti	9, 16, 17, 18, 19, 23, 24, 26, 29, 37, 38, 55, 56, 63, 71, 73, 81, 87, 88, 94, 95, 96, 98, 99, 100, 101, 105, 106, 111, 115, 120, 122, 125, 126, 138, 144, 182
Dominica	19, 94, 97, 111
Ecuador	81, 97, 100, 111, 118, 121, 123, 128, 130, 152
Equatorial Guinea	1, 29, 30, 87, 98, 103, 105, 111, 138, 182
France: New Caledonia	42, 44, 81, 115, 120, 129
Gambia	138, 182
Ghana	29, 74, 81, 92, 94, 98, 100, 105, 111, 115, 119, 182
Grenada	26, 94, 95, 97, 99, 111, 138, 182
Guinea-Bissau	12, 17, 18, 19, 29, 81, 105
Guyana	29, 87, 94, 95, 98, 100, 111, 115, 129, 137, 138, 139, 140, 149
Kiribati	29, 87, 98, 105
Lao People's Democratic Republic	29, 138, 182
Lebanon	29, 59, 71, 77, 78, 90, 95, 131, 138, 152, 182
Lesotho	26, 138, 144, 182
Libya	95, 131
Malawi	19, 26, 29, 81, 97, 98, 99, 105, 129, 138, 144, 150, 159, 182
Mali	19, 26, 29, 95, 105, 138, 144, 182
Malta	77, 78, 95, 96, 98, 131
Mauritania	112, 114, 122, 138, 182
Mongolia	123, 138, 144, 182
Niger	81, 95, 131, 138, 148, 182
San Marino	100, 111, 143, 148, 150, 156, 160, 182
Sao Tome and Principe	17, 18, 19, 29, 81, 87, 88, 98, 100, 105, 106, 111, 138, 144, 159, 182

Cases of failure to supply information in reply to comments made by the Committee of Experts	
State	Conventions Nos
Sierra Leone	17, 26, 29, 45, 81, 87, 88, 94, 95, 98, 100, 101, 105, 111, 119, 125, 126, 144
Solomon Islands	26, 94, 95
Sudan	26, 95, 98, 122
Syrian Arab Republic	94, 95, 98, 100, 105, 131, 170
Tajikistan	32, 77, 78, 79, 87, 90, 95, 97, 98, 113, 119, 120, 122, 126
Thailand	19, 29, 122, 138, 182
Turkey	26, 77, 94, 95, 98, 99, 122, 123, 152
Uganda	81, 87, 98, 100, 105, 111, 123, 124, 143, 144, 154, 182
Zambia	17, 18, 97, 131, 173, 176

61. 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.

62. The Committee notes with *concern* that the number of comments to which replies have not been received remains significantly high. This 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 seven 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

63. 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.

### **Observations and direct requests**

64. 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>20</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>21</sup>

<sup>20</sup> 331 reports.

<sup>21</sup> ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev., 2012. Observations and direct requests are accessible through the NORMLEX database.

65. 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***

66. 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	87
Bosnia and Herzegovina	111
Brazil	169
Chile	35
Ethiopia	111
Japan	100, 181
Mexico	150, 155
Peru	71
Zimbabwe	87

### ***Special notes***

67. 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 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 2013.

68. 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.

69. 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.

70. In addition, the Committee wishes to emphasize that its decision not to double footnote a case which it has previously drawn to the attention of the Conference Committee in no way implies that it has considered progress to have been made therein.

71. 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.

72. 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
Angola	88
Argentina	17
Armenia	17, 18
Australia	137
Bahamas	88
Plurinational State of Bolivia	128
Burundi	144
Cameroon	94, 95, 111
Cape Verde	155
China – Hong Kong Special Administrative Region	97
Colombia	12, 17, 18, 81, 162
Costa Rica	96, 102
Democratic Republic of the Congo	144
Djibouti	63
Ecuador	95
Egypt	96
Finland	81
France	97, 137
France – French Polynesia	115
Greece	81, 95, 102, 144, 150
Guatemala	144, 162
Guinea	144
Guyana	144
Haiti	12, 17, 24, 25,42
Honduras	42, 98

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
India	42
Islamic Republic of Iran	95, 111
Ireland	26, 142, 144
Jamaica	94
Japan	81, 144, 181
Jordan	144
Kazakhstan	138
Kenya	138, 144
Kuwait	144
Lesotho	158
Luxembourg	96
Madagascar	144
Malaysia – Peninsular Malaysia	19
Malaysia – Sarawak	19
Mauritania	29, 102
Mauritius	19
Mexico	144, 150
Montenegro	158
Mozambique	144
Nepal	144
Netherlands	97, 102, 128, 130
Nigeria	144
Norway	144
Peru	71
Poland	95, 137
Portugal	131, 158
Romania	95
Saint Lucia	158
San Marino	140, 159
Slovakia	158, 159
Spain	94, 122
Sri Lanka	81
Suriname	118
Swaziland	160
Thailand	19
The former Yugoslav Republic of Macedonia	158
Tunisia	122

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
Turkey	158
Uganda	26, 144, 158
United Kingdom	97
United Kingdom – British Virgin Islands	82
Uzbekistan	182
Bolivarian Republic of Venezuela	144
Yemen	122
Zambia	176

73. The Committee has also requested governments to supply full particulars to the Conference at its next session of 2013 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 2013	
State	Conventions Nos
Honduras	98
Islamic Republic of Iran	111
Kenya	138
Uzbekistan	182

74. 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	Convention Nos
Burkina Faso	184
Guatemala	161
Guinea	150
Tajikistan	81

### ***Practical application***

75. 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.

76. The Committee notes that **441** reports received this year contain information on the practical application of Conventions. Of these, **59** reports contain information on national jurisprudence. The Committee also notes that **382** of the reports contain information on statistics and labour inspection.

77. 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

78. 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.

79. At its 80th and 82nd Sessions (2009 and 2011), 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 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.

80. Since first identifying cases of **satisfaction** in its report in 1964,<sup>22</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 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.

81. Details concerning these cases of progress are to be found in Part II of this report and cover **39** instances in which measures of this kind have been taken in **30** 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
Algeria	87
Australia	155
Bahamas	138
Bulgaria	98
Burkina Faso	17, 138, 161, 182
Cape Verde	81
Croatia	119
Egypt	87
Grenada	100
Guinea	182

<sup>22</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

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
Hungary	29, 98
Ireland	182
Japan	19
Jordan	182
Malaysia	182
Myanmar	29, 87
Niger	105
Pakistan	18
Panama	98
Philippines	90
Portugal	6, 77, 78
Romania	87
Rwanda	138
Saint Lucia	87
Timor-Leste	98
Trinidad and Tobago	182
Turkey	98, 105
Ukraine	87
United Arab Emirates	138, 182
United States	182

**82.** 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 **2,914** since the Committee began listing them in its report.

**83.** Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979.<sup>23</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;

<sup>23</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.



- 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.

**84.** 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 **240** instances in which measures of this kind have been adopted in **109** 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	111
Angola	81
Antigua and Barbuda	81, 155
Argentina	42
Armenia	81
Australia	155
Austria	81, 100, 111
Azerbaijan	95
Bahamas	138, 144, 182
Belgium	32, 81, 100
Plurinational State of Bolivia	19, 81, 128
Bosnia and Herzegovina	111, 126
Brazil	169
Bulgaria	77, 111, 156
Burkina Faso	6, 81, 95, 97, 131, 138, 159, 182
Cameroon	81
Canada	100
Cape Verde	155
Chad	26
Chile	169
China	155, 170
China – Hong Kong Special Administrative Region	32, 81
China – Macau Special Administrative Region	81, 144
Colombia	12, 17, 18, 81, 87
Comoros	17, 100, 111
Costa Rica	81, 98, 137
Croatia	90, 148, 156
Cyprus	111
Czech Republic	111
Denmark	111, 169

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
Dominican Republic	111
El Salvador	81, 111, 129
Estonia	81
Finland	111, 152, 156
France	95, 97, 111, 114, 156
Georgia	29, 182
Germany	167, 187
Greece	42, 81
Grenada	105
Guatemala	97, 103, 117, 182
Guinea	26, 81, 95, 99, 138, 150, 182
Guyana	182
Haiti	87
Honduras	29, 138, 182
Iceland	111, 156, 159
India	29, 42, 122, 127
Islamic Republic of Iran	29
Ireland	29, 81, 155
Israel	97, 144, 182
Italy	111
Jamaica	182
Japan	29, 81, 156
Jordan	29
Kenya	29, 81, 105, 129, 143
Kyrgyzstan	77, 79, 182
Latvia	182
Lesotho	29, 81
Luxembourg	158
Madagascar	81
Mauritania	81
Mauritius	160
Mexico	29, 150, 155, 182
Moldova	29
Mongolia	111
Montenegro	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
Morocco	26, 138
Myanmar	19, 87
Namibia	29
Netherlands – Aruba	138
Nicaragua	77
Niger	102
Norway	94, 156
Pakistan	81
Panama	87, 98
Paraguay	29, 169
Peru	12, 29, 78, 98
Philippines	87, 97, 98
Portugal	77, 156
Romania	29, 95
Russian Federation	81, 87, 185
Rwanda	62, 111, 138, 182
Saint Lucia	95, 158
Senegal	96, 182
Serbia	90, 156, 187
Seychelles	26
Sierra Leone	111
Singapore	81
Slovakia	17, 26
Slovenia	81, 129, 156, 182
Solomon Islands	81
South Africa	29
Spain	29, 95
Sri Lanka	98
Sweden	143, 156
Tajikistan	143
United Republic of Tanzania	29, 59, 131
United Republic of Tanzania – Zanzibar	85
The former Yugoslav Republic of Macedonia	98, 143, 158
Timor-Leste	98
Togo	98, 138

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
Trinidad and Tobago	81, 150
Turkey	42, 81
Uganda	95, 122
Ukraine	29, 122, 173
United Arab Emirates	81, 182
United Kingdom	87, 97
United Kingdom – Anguilla	29
United Kingdom – British Virgin Islands	85
United Kingdom – Jersey	99
United States	105, 182
Uruguay	32, 97, 98, 128, 129, 130, 131, 137
Bolivarian Republic of Venezuela	81, 95
Viet Nam	81
Yemen	81
Zimbabwe	140, 159

### **Cases of good practice**

85. 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>24</sup>

86. 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**. This identification also does not imply that the concerned member State is in conformity with other ratified Conventions. 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.

87. 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.

<sup>24</sup> It will be recalled that this two-stage process is also used for the so-called “double footnotes”; see para. 68 above.

- (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**

88. 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 37–41, 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 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.

89. 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.

List of the cases for which <b>technical assistance</b> would be particularly useful in helping member States	
State	Conventions Nos
Antigua and Barbuda	17, 81
Argentina	129
Bangladesh	18, 87, 100
Bosnia and Herzegovina	119, 136, 139, 148, 155, 161, 162, 174, 176, 184, 187
Botswana	98, 151
Bulgaria	87
Burkina Faso	18, 81, 87, 129, 161, 170
Burundi	144
Cambodia	100
Cape Verde	81, 100, 111, 155
Chile	35, 37
Colombia	87
Comoros	17
Congo	111
Costa Rica	95
Djibouti	63
Ecuador	130
Egypt	87, 100, 118
Ethiopia	87
Greece	102

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>
Guatemala	87, 161
Guinea	87, 122
Guinea-Bissau	138
Guyana	81, 136, 150
Haiti	12, 17, 19, 24, 25, 42, 81
Honduras	87
Indonesia	87
Islamic Republic of Iran	111
Iraq	89
Kenya	97, 143
Kyrgyzstan	115
Lesotho	81
Liberia	87
Madagascar	81
Malaysia – Peninsular Malaysia	19
Malaysia – Sabah	94
Malaysia – Sarawak	19
Malta	148
Mauritania	29
Mexico	155
Mozambique	138, 144, 182
Netherlands	102
Netherlands – Aruba	81, 138
Nigeria	138
Panama	81
Paraguay	87, 98
Peru	29, 87, 98
Rwanda	62, 118
Serbia	87
Seychelles	87, 138, 182
Solomon Islands	81
Swaziland	160
United Republic of Tanzania	29, 105
United Republic of Tanzania – Zanzibar	87
Togo	143
Tunisia	87

List of the cases for which <b>technical assistance</b> would be particularly useful in helping member States	
State	Conventions Nos
Turkmenistan	87
Turkey	81
United Arab Emirates	89
Uruguay	121
Uzbekistan	98, 182
Yemen	138
Zambia	176
Zimbabwe	87

### ***Strengthening of programmes for a better application of international labour standards***

90. With regard to technical assistance, the Committee further notes that the Governing Body, during its 310th Session, allocated funds of the Special Programme Account for a limited duration to support the strengthening of programmes which would result in the better application of international labour standards. These time-bound assistance activities on international labour standards are being carried out in 2012 and 2013 and are comprised of two elements:

- (1) Reporting assistance to countries, a reporting “safety net” that will enable these countries to catch up on their backlog and to better discharge their reporting obligations in the future.
- (2) Assistance to countries to reduce the implementation gap with respect to specific ratified Conventions.

91. The Committee notes that under this Programme, priority countries were identified (jointly with the field offices) on the basis of the problems encountered in reporting and implementation, and a strategy has been developed to act on several fronts, with the aim of achieving better compliance with reporting obligations and/or ratified Conventions. In each country, selected key actors likely to bring about positive change in terms of standards are given technical assistance, training and are made aware of the issues at stake. Currently some 47 national action plans (discussed or under discussion with the national constituents) have been developed for 38 countries<sup>25</sup> and are in the phase of implementation. Activities under each country action plan include one or more of the following: training on the content of selected international labour standards; research to generate information on the status of implementation of international labour standards, including legislative gap analyses, advice on issues that will enable tripartite constituents to take the relevant decisions aiming at full implementation; legal advice on the revision or drafting of legislation and regulations in the light of the supervisory bodies’ comments; strengthening of data collection and reporting capacity of tripartite constituents.

92. The Committee welcomes this technical assistance programme and takes note of the fact that the results will be reported to the Committee in time for its 2013 session to enable it to assess progress made.

### ***Ratification of the Domestic Workers Convention, 2011 (No. 189)***

93. The Committee notes that observations and direct requests under a diverse set of Conventions address the status of domestic workers, raising distinct challenges regarding labour standards compliance. In this regard, the Committee notes the International Labour Conference’s recent adoption of the Domestic Workers Convention, 2011 (No. 189), and encourages governments to consider ratifying this Convention both for its own value and as a factor contributing to more effective compliance with Conventions Nos 87, 97, 111, 138, 143 and 182.

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

94. 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

<sup>25</sup> Bangladesh, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Central African Republic, China, Colombia, Comoros, Egypt, Equatorial Guinea, Gabon, Ghana, Grenada, Guatemala, Guinea-Bissau, Guyana, Haiti, Indonesia, Jordan, Lebanon, Republic of Moldova, Morocco, Paraguay, Philippines, Peru, Saint Kitts and Nevis, Saint Lucia, Seychelles, Solomon Islands, Sri Lanka, Sudan, Tajikistan, United Republic of Tanzania, Togo, Zambia, Zimbabwe.

22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, they have communicated copies of the reports supplied to the Office. 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. It should be recalled that 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 to discharge their obligation under article 23(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.

**95.** Since its last session, the Committee has received **1,004** comments (compared to 1,051 last year), **112** of which (compared to 129 last year) were communicated by employers' organizations and **892** (compared to 922 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.

**96.** The majority of the comments received (**846**) relate to the application of ratified Conventions (see Appendix III).<sup>26</sup> Some **466** of these comments relate to the application of fundamental Conventions, **92** relate to governance Conventions and **288** concern the application of other Conventions. Moreover, **158** comments concern reports provided under article 19 of the Constitution on the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).<sup>27</sup>

**97.** The Committee notes that, of the comments received this year, **668** 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 **178** cases, the governments transmitted the comments made by employers' and workers' organizations with their reports, sometimes adding their own comments.

**98.** 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.

**99.** 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.

**100.** The Committee further notes that the International Organisation of Employers (IOE) has submitted an article 23 comment in relation to 50 countries raising its disagreement with the Committee's observations in relation to the right to strike. This comment reiterates the general views of the IOE that Convention No. 87 does not recognize, either expressly or implicitly, a right to strike. The IOE contests the fact that the Committee of Experts nevertheless persists in interpreting the right to strike arising from Convention No. 87 as a fundamental right of workers and their organizations. The IOE thus requests the Committee to take duly into account all the elements expressed in detail in its submission when examining the application in law and practice of Convention No. 87 in relation to these countries.

**101.** The Committee has carefully read and noted the detailed discussion on the right to strike at the Committee on the Application of Standards during the 101st International Labour Conference. The Committee observes that the Conference Committee concluded this discussion by noting the different views expressed on the functioning of the Committee in relation to the reports of the Committee of Experts which were submitted for its consideration and recommended that the Conference: (1) request the Director-General to communicate those views to the Governing Body; and (2) invite the Governing Body to take appropriate follow-up as a matter of urgency, including through informal tripartite consultations prior to its November 2012 session.

<sup>26</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 NORMLEX database.

<sup>27</sup> See Report III (Part 1B), ILC, 102nd Session, Geneva, 2013.



**102.** The Committee further notes the decision of the November 2012 Governing Body which, noting the outcome of the informal tripartite consultations which had taken place on 19 September 2012 and the commitment to pursue discussions in a constructive manner, invited the Officers of the Governing Body to pursue informal tripartite consultations and to report to the Governing Body at its 317th Session (March 2013). In light of the above, the Committee observes that this matter, which includes questions related to the application of Convention No. 87, is still pending before the Governing Body. Recalling that all the ILO supervisory bodies have addressed the question of the right to strike for nearly 60 years now, the Committee considers that this question is one of primary importance for the constituents of the ILO and firmly hopes that it will be resolved as soon as possible. The Committee trusts that an open dialogue on the issues of concern with the tripartite constituents will enable the parties to reach a conclusion and observes that the Committee on Freedom of Association, in the constructive spirit of consensus and social dialogue with which it carries out its work, may be an appropriate forum for discussing these issues, as the specialized body, globally recognized, for matters relating to freedom of association.

**103.** The Committee further notes that the IOE has submitted comments in August 2012 on the application in law and practice of Articles 6, 7, 15 and 16 of Convention No. 169 concerning the requirement of consultation in 15 countries. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. The IOE therefore calls on the supervisory bodies and in particular the Committee to avoid broad interpretations of the provisions of the Convention.

**104.** In this respect, the Committee refers to its general observations of 2009 and 2011, in which it indicated that, in reviewing countries' compliance with the Convention, it has remained true to the understanding of the Convention. The Committee has consistently indicated that "consultation and participation" constitute the cornerstone of Convention No. 169 on which all its provisions are based, and in particular the relevant provisions of the Convention in Articles 6, 7, 15 and 17. Articles 27 and 28 also refer to consultation and, more specifically, regarding education. The Committee confirms the view it expressed in 2011 that its understanding of the meaning of "consultation" has remained faithful to both the letter and spirit of the relevant provisions of the Convention and to the preparatory work leading to its adoption, as well as to the findings of tripartite bodies that the Governing Body has established under article 24 of the Constitution. The Committee also stated that it was not a court of law and that, as a result, cannot issue injunctions or provisional measures. The Committee has also stressed that the Convention is an important tool in achieving the goals of sustainable development. In the observations formulated at the present session on Convention No. 169, the Committee has invited governments to include in their reports, which are due in 2013, comments they may deem appropriate on the observations made by the IOE. It also requested governments, when preparing their reports on Convention No. 169, to hold consultations with the social partners and indigenous peoples' organizations on the results achieved by the measures adopted to give effect to the provisions of the Convention (Parts VII and VIII of the report form).

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

**105.** 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.

**106.** 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.

107. 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.

108. 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.

109. 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)**

110. 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 2011 (100th Session) (Conventions Nos 128 to 189, Recommendations Nos 132 to 201 and Protocols);
- (b) replies to the observations and direct requests made by the Committee at its 82nd Session (November–December 2011).

111. 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 99th Session were submitted and the date of submission. In addition, Appendix IV summarizes the information supplied by governments with respect to earlier adopted instruments submitted to the competent authority in 2011. Some governments mentioned in Annex IV also provided information on the submission of the Social Protection Floors Recommendation, 2012 (No. 202), adopted at the 101st Session of the Conference (June 2012).

112. 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.

#### **100th Session**

113. At its 100th Session in June 2011, the Conference adopted the Domestic Workers Convention, 2011 (No. 189), and its corresponding Recommendation, 2011 (No. 201). The 12-month period for submission to the competent authorities of Convention No. 189 and Recommendation No. 201 ended on 16 June 2012, and the 18-month period on 16 December 2012. At this session, the Committee examined new information on the steps taken regarding Convention No. 189 and Recommendation No. 201 by the following governments: **Algeria, Antigua and Barbuda, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Plurinational State of Bolivia, Bosnia and Herzegovina, Brunei Darussalam, Cameroon, Cape Verde, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, Estonia, Ethiopia, Gabon, Georgia, Germany, Ghana, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Kenya, Republic of Korea, Lao People's Democratic Republic, Mauritius, Mongolia, Morocco, Myanmar, New Zealand, Norway, Panama, Paraguay, Philippines, Poland, Romania, Saudi Arabia, Serbia, Singapore, Slovakia, South Africa, Spain, Sweden, United Republic of Tanzania, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United States, Uruguay, Uzbekistan, Viet Nam and Zimbabwe.**

## **Cases of progress**

114. The Committee notes with *interest* the information sent in the course of the period concerned by the governments of the following countries: **Cambodia, Colombia, Cyprus, Ethiopia, Ghana, Turkmenistan and Uzbekistan**. It welcomes the efforts made by these governments to recognize the significant delay in submission and to take important steps toward fulfilling their obligation to submit to their parliamentary bodies the instruments adopted by the Conference over a number of years.

## **Special problems**

115. To facilitate the work of the Committee on the Application of Standards, this report only mentions those governments that have not submitted to the competent authorities the instruments adopted by the Conference for at least seven sessions. **This time frame begins on the 91st (2003) Session and concludes on the 100th (2011) Session because the Conference did not adopt any Conventions or Recommendations during the 93rd (2005), 97th (2008) or 98th (2009) Session.** Thus, this time frame 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.

116. The Committee notes that at the closure of its 83rd Session, on 7 December 2012, the following **34** countries were in this situation: **Angola, Bahrain, Bangladesh, Belize, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Fiji, Guinea, Haiti, Iraq, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Peru, Rwanda, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Uganda and Ukraine.**

117. The Committee is aware of the exceptional circumstances that have affected some of these countries for years, as a result of which they have been deprived of the institutions needed to fulfil the obligation to submit instruments. At the 101st Session of the Conference (June 2012), 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 previously, 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.

118. The abovementioned countries have been identified in observations published in 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. This notice also allows the governments to benefit from the measures the Office is prepared to take, upon their request, 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**

119. 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).

120. The Committee hopes that the observations and the 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.

121. 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.

122. 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

**123.** 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, governments were requested to supply reports under article 19 of the Constitution as a basis for the General Survey on the following instruments: the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154), and the Collective Bargaining Recommendation, 1981 (No. 163).

**124.** A total of **768** reports were requested from member States, under article 19 of the Constitution and **339** reports were received. This represents **44.14** per cent of the reports requested.

**125.** 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 **17** countries: **Afghanistan, Brunei Darussalam, Cambodia, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Ireland, Libya, Niger, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan and Vanuatu.**

**126.** 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.

**127.** Part III of this report (issued separately as Part 1B) contains the General Survey concerning labour relations and collective bargaining in the public service.<sup>28</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 five members of the Committee.

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<sup>28</sup> See Report III (Part 1B), International Labour Conference, 102nd Session, Geneva, 2013.

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

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

128. 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 asked 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 (UN), Food and Agriculture Organization of the United Nations (FAO), Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Health Organization (WHO), Inter-American Indian Institute of the Organization of American States;
- the Radiation Protection Convention, 1960 (No. 115): International Atomic Energy Agency;
- the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117): UNFAO, OHCHR and UNESCO;
- the Rural Workers' Organisations Convention, 1975 (No. 141): UN, OHCHR and UNFAO;
- the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147): International Maritime Organization;
- 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): UNFAO, OHCHR, UNESCO, WHO and Inter-American Indian Institute of the Organization of American States.

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

129. 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 and supervision of relevant instruments is necessary, 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.

130. 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 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 23 November 2012, at the invitation of the Friedrich Ebert Stiftung. This year, “the supervision of labour rights in the informal economy” was selected as a topic for discussion.

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

**131.** In accordance with the supervisory procedure established under Article 74(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. The Committee’s conclusions on 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.

**132.** 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.

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**133.** 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, 7 December 2012

*(Signed)* Yozo Yokota  
Chairperson

Denys Barrow  
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 adviser 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 Denys BARROW, SC** (Belize)

Retired 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 Human Rights Centre) at the *Instituto de Ensino Superior de Brasilia*. Professor at the National School for Labour Judges and at the Superior School for Prosecutors.

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

Professor of Law, Fordham University School of Law, New York, NY; Co-Chair of the Public Review Board of the United Automobile Workers Union of America (UAW); former Visiting Fellow, Oxford University, United Kingdom; former Visiting Faculty, Harvard Law School; former Professor of Law, The Ohio State University Moritz College of Law; 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 Public Law at the University of Cape Town; former special Adviser 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 Justice, an independent human rights organization (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 (2003–11); 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.

**Ms Graciela DIXON CATON** (Panama)

Former President of the Supreme Court of Justice of Panama; former President of the Penal Court of Cassation and of the Chamber of General Business Matters of the Supreme Court of Panama; former President of the International Association of Women Judges; former President of the Latin American Federation of Judges; former National Consultant for the United Nations Children's Fund (UNICEF); presently Arbitrator at the Court of Arbitration of the Official Chamber of Commerce of Madrid; Arbitrator at the Center for Dispute Resolution (CESCON) of Panama; Adviser to the Rector of the University of Panama; and attorney in private practice.

**Mr Rachid FILALI MEKNASSI** (Morocco)

Doctor of Law; Professor at the University Mohammed V of Rabat (Morocco); consultant with national and international public bodies, including the World Bank, United Nations Development Programme (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 (Rt.); 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 Dierk LINDEMANN** (Germany)

Doctor of law; Former Managing Director of the German Shipowners' Association (1991–2006) and Legal Adviser to the Association (1972–2006); Author of the German Seaman's Act Commentary; former spokesperson for the Shipowners' group at the ILO maritime meetings from 1996 to 2006; former Chairman of the Labour Affairs Committee of the International Shipping Federation as well as the Social Affairs Committee of the European Shipowners' Association (1990–2006).

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

Honorary Advocate-General, Court of Cassation (Social Division); member of the Advisory Council of the Biomedical Agency; 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 Civil Proceedings and Social Law, Russian State University of Oil and Gas; Secretary, Russian Association for Labour and Social Security Law; member of Non-State Expert Committee on Human Rights; member of the European Committee of Social 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; 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 Experts on International Protection (UNHCR); Chairman of the UN Commission of Inquiry on the Ivory Coast (2011); member, Advisory Board, UN Human Security Fund; Commissioner, UN Commission of Inquiry on Syria (2012).

**Ms Rosemary OWENS** (Australia)

Professor of Law, Adelaide Law School, The University of Adelaide, and former Dean of Law (2007–11); Fellow of the Australian Academy of Law; 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 current member of the Board of Management of the Working Women's Centre (SA).

**Mr Francisco PÉREZ DE LOS COBOS ORIHUEL** (Spain)

Doctor of Law; Judge of the Constitutional Court of Spain; Professor of Labour Law at the Complutense University of Madrid and former Professor at the University of Valencia, the University of Las Islas Baleares and the University Autònoma de Barcelona; former expert adviser to the Economic and Social Council of Spain and President of the Committee of the Council responsible for preparing the report on the economic and labour situation in Spain.

**Mr Paul-Gérard POUGOUÉ** (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); member of the Council of the International Order of Academic Palms of the African and Malagasy Council of Higher Education (CAMES).

**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 Benin/Niger; senior judge of the Court (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 Court of Arbitration for Sport; member of the Institute of International Law; member of numerous national and international professional and academic societies; Curatorium of the Hague Academy of International Law; member of Pontifical Council for Justice and Peace.

**Mr Yozo YOKOTA** (Japan)

President, Japan Association for United Nations Studies; President, Centre for Human Rights, Education and Training (Japan); Commissioner, International Commission of Jurists; President, Japan Association for United Nations Studies; former Professor, Chuo University, University of Tokyo and International Christian University; former member, UN Subcommission on the Promotion and Protection of Human Rights.



## **Part II. Observations concerning particular countries<sup>\*</sup>**

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<sup>\*</sup> 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 78–84, 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 observation***

The Committee recalls that the purpose of the obligation to communicate copies of reports on ratified Conventions to representative employers' and workers' organizations, established in article 23, paragraph 2, of the Constitution, is to enable these organizations to make their own observations on the application of ratified Conventions. The Committee emphasizes that the information received from employers' and workers' organizations bears witness to their involvement in the reporting system and that such information has often led to better knowledge and understanding of the difficulties that countries have met. Further to its general observation of last year, the Committee welcomes the fact that nearly all countries have fulfilled this obligation this year. However, it notes that none of the reports supplied by the following countries indicates the employers' and workers' organizations to which a copy has been communicated: **Afghanistan** (2012), **Guyana** (2012), **Namibia** (2012) and **Zambia** (2012).

For the following countries, the Committee notes that a majority of the reports received do not indicate the representative employers' and workers' organizations to which copies of the reports were communicated: **Bahamas** (2012), **Côte d'Ivoire** (2012) and **South Africa** (2012). The Committee requests these Governments to fulfil this constitutional obligation without delay.

### ***General observations***

#### **Bahamas**

The Committee notes that eight of the 18 reports due on the application of ratified Conventions have been received this year, so that ten reports remain due, most of which should include information in reply to comments made by the Committee. Furthermore, a first report due (since 2010) on the application of Convention No. 185 has still not been received. Although a number of officials of the Ministry of Labour and Social Development received training in previous years, the Office reminds the Government that it is ready to provide any further assistance needed. The Committee urges that the Government will soon submit all the reports due, in accordance with its constitutional obligation.

#### **Burundi**

The Committee notes that for the second year in succession, none of the reports due on the application of ratified Conventions have been received and that 25 reports are now due (for fundamental, governance and technical Conventions), most of which should include information in reply to comments made by the Committee. Furthermore, the Committee notes that a government official received training in 2011 at the ILO International Training Centre in Turin. The Committee hopes that the Government will soon submit the reports due, in accordance with its constitutional obligation.

## Chad

The Committee notes with *concern* that for the third year in succession, the reports due on the application of ratified Conventions have not been received and that 16 reports are now due (on fundamental, governance and technical Conventions), most of which should include information in reply to comments made by the Committee. Furthermore, the Committee notes that a government official received training at the ILO International Training Centre in Turin in 2012. The Office nonetheless reminds the Government that it is ready to provide any further assistance that might be necessary. The Committee asks the Government to take the necessary steps without delay to submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Djibouti

The Committee notes with *concern* that for the fourth year in succession, the reports due on the application of ratified Conventions have not been received and that some 50 reports are now due, most of which should include information in reply to comments made by the Committee. The Office reminds the Government that it is ready to provide any necessary assistance. The Committee requests the Government to take the necessary measures without delay to submit all 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 sixth year in succession, apart from a report sent in 2008, the reports due on the application of ratified Conventions have not been received and that 14 reports are now due, most of which should include information in reply to comments made by the Committee, as well as first reports on the application of Conventions Nos 68 and 92 (due since 1998). It notes that, apart from a report submitted in 2008, the Government has sent no further reports since 2006. The Committee is bound to express *deep concern* at a situation that has persisted despite numerous initiatives taken by the Office to afford technical assistance. It urges the Government to take the necessary steps without delay, including through further recourse to technical assistance, to submit the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Kazakhstan

The Committee notes the efforts made by the Government, which are reflected in the fact that the majority of the reports due on the application of ratified Conventions have been received this year. However, the first reports on the application of Convention No. 167 (due since 2010) and Convention No. 185 (due since 2011) have still not been received. It asks the Government to take the necessary steps to submit these first reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Kiribati

The Committee notes that for the second year in succession, the reports due on the application of ratified Conventions have not been received and that eight reports are now due (for all the fundamental Conventions), including four first reports (Conventions Nos 100, 111, 138 and 182). It further notes that two government officials received training in 2011. The Committee hopes that the Government will soon submit these reports, in accordance with its constitutional obligation.

## Kyrgyzstan

The Committee notes the efforts made by the Government, reflected in the fact that the majority of the reports due on the application of ratified Conventions have been received this year. However, the first reports on application of Convention No. 184 (due since 2006), and Convention No. 157 (due since 2010) have still not been received. It asks the Government to take the necessary steps to submit all the first reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Nigeria

The Committee notes that 20 of the 30 reports due on the application of ratified Conventions have been received, so that ten reports remain due, including the first report on the application of Convention No. 185 (due since 2010). Most of these reports should include information in reply to comments made by the Committee. It further notes that two officials of the Ministry of Labour received training in 2011 and that tripartite training on constitutional obligations was organized in collaboration with the Office in the autumn of 2012. The Committee trusts that the Government will take the necessary steps without delay to submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## San Marino

The Committee notes that none of the reports due on the application of ratified Conventions have been received and that 19 reports are now due (for fundamental and technical Conventions), some of which should include information in reply to comments made by the Committee. The Office reminds the Government that it is ready to provide any necessary assistance. The Committee hopes that the Government will soon submit these reports, in accordance with its constitutional obligation.

## Sao Tome and Principe

The Committee notes that this year again the reports due on the application of ratified Conventions have not been received and that 17 reports are now due (for fundamental, governance and technical Conventions), including the first report on the application of Convention No. 184 (due since 2007). Some of these reports should include information in reply to comments made by the Committee. Furthermore, the Committee notes that two Ministry of Labour officials received training in 2010 at the ILO International Training Centre in Turin. The Office nonetheless reminds the Government that it is ready to provide any further assistance that might be necessary. The Committee hopes that the Government will soon submit these reports, in accordance with its constitutional obligation.

## Seychelles

The Committee notes that most of the reports due on the application of ratified Conventions have been received. However, the first reports on the application of Conventions Nos 147 and 180 (due since 2007) have not been received. The Committee further notes that the country is benefiting from a standards-related technical cooperation programme organized by the Office, in the course of which a tripartite workshop on constitutional obligations was held in August 2012. The Committee accordingly hopes that the Government will soon submit the other first reports, in accordance with its constitutional obligation.

## Sierra Leone

The Committee notes with *deep concern* that for the seventh year in succession, the reports due on the application of ratified Conventions have not been received and that 24 reports are now due (for fundamental, governance and technical Conventions), most of which should include information in reply to comments made by the Committee. Furthermore, the Committee notes that two government officials received training at the ILO International Training Centre in Turin in 2011. The Office nonetheless reminds the Government that it is ready to provide any further assistance that might prove necessary. The Committee expresses the firm hope that the Government will take the necessary steps without delay to submit all 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 seventh year in succession, the reports due on the application of ratified Conventions have not been received and that 13 reports are now due (on fundamental and technical Conventions). The Committee hopes that as soon as the situation in the country allows, the Office will be able to provide all necessary assistance to enable the Government to submit the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Vanuatu

The Committee notes that none of the reports due on the application of ratified Conventions have been received. All of these reports are first reports: five have been due since 2008 on Conventions Nos 87, 98, 100, 111 and 182, and one since 2010 on Convention No. 185. The Committee notes that an official of the Ministry of Internal Affairs received training in 2010 at the ILO International Training Centre in Turin. The Office nonetheless reminds the Government that it is ready to provide any further assistance needed. The Committee hopes that the Government will soon submit these reports, in accordance with its constitutional obligation.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Angola, Barbados, Central African Republic, Comoros, Democratic Republic of the Congo, Dominica, Ecuador, France: New Caledonia, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Lao People's Democratic Republic, Lebanon, Lesotho, Libya, Malawi, Mali, Mongolia, Netherlands: Caribbean Part of the Netherlands, Niger, Solomon Islands, Sudan, Syrian Arab Republic, Tajikistan, Thailand, Tunisia, Turkey, Uganda, Zambia.*





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

### Algeria

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

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike in a communication dated 29 August 2012 which are dealt with in the General Report of the Committee. The Committee also notes the Government's reply to the observations of 31 July 2012 from the International Trade Union Confederation (ITUC) and the observations of 31 August 2012 from Education International (EI), the National Autonomous Union of Public Administration Staff (SNAPAP) and the National Autonomous Union of Secondary and Technical Education Teachers (SNAPEST), which refer to legislative issues already raised by the Committee and to violations of trade union rights in practice. However, the Committee observes that the Government has not sent any reply to certain allegations, especially those relating to acts of intimidation and threats, including death threats, towards trade union leaders and members. In this regard, the Committee recalls that the atmosphere of fear induced by threats to the life of trade unionists has inevitable repercussions on the exercise of trade union activities, and the exercise of these activities is possible only in a context of respect for basic human rights and in a climate free of violence, pressure and threats of any kind. ***The Committee requests the Government to send its comments on the abovementioned allegations.***

Furthermore, the Committee, like the Committee on Freedom of Association (Case No. 2701, November 2012 session), notes with ***satisfaction*** the registration of the National Union of Vocational Training Workers (SNTFP), which had been awaiting approval since 2002.

***Article 2 of the Convention. Right to establish trade union organizations.*** The Committee previously noted that section 6 of Act No. 90-14 of 2 June 1990 restricts the right to establish a trade union organization to persons who are Algerian by birth or who have had Algerian nationality for at least ten years. Recalling that the right to organize must be guaranteed to workers and employers without distinction whatsoever, with the possible exception of those categories specified in ***Article 9*** of the Convention, and that foreign workers too must have the right to establish organizations, the Committee asked the Government to take the necessary steps to amend section 6 of Act No. 90-14 so as to grant all workers, without distinction as to nationality, the right to establish a trade union. The Committee notes that the Government reiterates in its report that the amendment requested by the Committee will be examined as part of the reform of the Labour Code. ***The Committee hopes that the announced legislative reform will occur in the near future and urges the Government to provide information on developments in this respect, especially regarding any amendment of section 6 of Act No. 90-14 securing to all workers, without distinction as to nationality, the right to form a trade union.***

***Articles 2 and 5. Right of workers to establish and join organizations of their own choosing without previous authorization and to establish federations and confederations.*** In its previous comments the Committee asked the Government to take specific measures to amend the legislative provisions that prevent workers' organizations, irrespective of the sector to which they belong, from forming federations and confederations of their own choosing (sections 2 and 4 of Act No. 90-14). The Committee notes that the Government reiterates that the Committee's request will be taken into account as part of the reform of the Labour Code. ***The Committee again urges the Government to report any developments regarding the amendment of section 4 of Act No. 90-14 so as to remove all obstacles preventing workers, regardless of the sector to which they belong, from establishing federations and confederations of their own choosing.***

***Article 3. Right of organizations to carry on their activities in full freedom and formulate their programmes.*** In its previous comments the Committee referred to section 43 of Act No. 90-02, under which strikes are forbidden not only in essential services the interruption of which may endanger the life, personal safety or health of the citizen, but also where the strike "is liable to give rise to a serious economic crisis". ***Noting that the Government reiterates that the interpretation given to this section is similar to that of the Committee, which refers to "strikes which, by reason of their scope and duration, are liable to cause an acute national crisis", the Committee requests the Government to give examples of specific cases in which recourse to strike action has been prohibited on the grounds of its possible effects.***

Finally, the Committee previously commented on section 48 of Act No. 90-02, which empowers the minister or the competent authority, where the strike persists and mediation has failed, or where compelling economic or social needs require, to refer the dispute to the National Arbitration Commission after consulting the employers' and workers' representatives. The Committee notes the additional information provided by the Government in its report, especially with regard to the composition of the National Arbitration Commission (section 2 of Executive Decree No. 90-148 of 22 December 1990), which is a tripartite body containing equal numbers of representatives of the employers, the workers and the State and which is chaired by a magistrate. The Committee further notes the Government's indication that only one dispute has been referred to the National Arbitration Commission since its establishment in 1990.

## Argentina

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

The Committee notes the reply from the Government to the observations from the International Trade Union Confederation (ITUC), dated 4 August 2011, and from the Confederation of Workers of Argentina (CTA), dated 31 August 2010, and in particular that: (1) in connection with the killing of a demonstrator from the railway industry, the judicial authority has brought charges against various persons in relation to this occurrence; and (2) concerning the allegation of an armed attack on the home of a trade union leader in the province of Jujuy in 2011, the Government reported in the framework of a case currently being examined by the Committee on Freedom of Association than an investigation had already been initiated. The Committee also notes the Government's statement that: (1) since 2003 it has adopted a policy of constantly strengthening the principles of freedom of association, and mechanisms for social dialogue have been reinforced; (2) between January 2011 and October 2012 "trade union status" was granted in 298 cases and trade union registration was issued in 682 cases; and (3) since 2004 collective bargaining has experienced continuous dynamics of its own, with close linkage with the prevailing model for strengthening the internal market, and this is combined with constant growth in minimum living wages, the determination of which is also the result of dialogue between representatives of workers and employers (the Government sends statistics on collective bargaining and wages, which will be analysed in the context of the examination of the application of the respective Conventions).

The Committee also notes the comments from the ITUC dated 31 August 2012 and from the CTA dated 31 August and 7 September 2012 referring to legislative issues already raised by the Committee (according to the CTA, the Government has not promoted any amendments to the current regulations applicable to trade unions and has not endorsed any of the drafts brought before the National Congress by legislators from various parliamentary groups), and also referring to allegations of violations of trade union rights in practice (some of the allegations are being examined by the Committee on Freedom of Association). The Committee notes the Government's statement that the disputes reported in various companies have been settled.

Furthermore, the Committee notes the comments from the General Confederation of Labour (CGT), dated 10 September 2012, stating that the Act on trade union associations: (1) establishes sufficient guarantees to give full effect to Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ensuring the full participation of all trade union organizations; and (2) ensures a minimum social protection floor established by workers' organizations having trade union status, as a result of which workers and their organizations enjoy better conditions of work.

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

The Committee has been noting in its observations since 2005 that the application made by the CTA in August 2004 for "trade union status" (a status which confers certain exclusive rights such as the conclusion of collective agreements, protection of union officers, receipt of trade union dues through deductions from wages by the employer, etc.) is pending. On several occasions, the Committee, 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 comments made in 2012, the CTA affirms that the authorities have still not taken a decision on the application for "trade union status". The Committee notes the Government's indication in its report that it is not simply a question of supporting or launching an initiative, as asserted by a number of trade union organizations, or to state that in relation to this matter theories concerning confederations exercising a single activity might be applied, in view of the fact that the legal situation of the CTA has to be analysed and incorporated into the system of Act No. 23551 in line with the applicable legislation and case law. ***While noting the new information from the Government, the Committee strongly requests that the Government will soon take a decision in this regard. The Committee requests the Government to provide information on this matter.***

#### ***Act on trade union associations and its implementing decree***

For many years the Committee has been referring in its comments to certain provisions of the Act on trade union associations No. 23551 of 1988 and its implementing regulations issued by Decree No. 467/88, which are not in conformity with the Convention. The Committee notes the Government's statement that: (1) it is worth noting that the constant developments in the Government's policies (referred to above) strengthening the principles of freedom of association have never been mentioned by the Committee; (2) the Government has maintained this trend even at times of crisis, in the context of an economic and social policy based on the principles of the Global Jobs Pact; (3) the supervisory system also has the obligation to highlight progress and good practices in countries since it has the role of collaborating with the State in solving problems; (4) even though the supervisory bodies are empowered to examine how the State applies the Convention, it must be borne in mind that the form taken by such application may differ according to the States concerned, and these forms are certainly related to the specific political, social and cultural features of each country; (5) the development of social and institutional policies by the Government reflects broad participation in social and labour-related matters by the players concerned and demonstrates unequivocal intent on the part of the State, which must also be taken into account when issuing an opinion on the system of labour relations; (6) if the real situation is taken into

account, it does not appear appropriate to use terms such as “urge”, as if it was simply a matter of time for the Government to tackle and resolve problems linked to the trade union history of the country from which a labour relations model has emerged, when the State has given evidence of the importance that it attaches to labour issues in general and to its relationship with the social partners in particular; (7) in other words, to go beyond what the Argentine State has achieved in recent years depends on social and cultural processes resulting in a convergence of interests of all protagonists in the same direction, which are able to reinforce the work initiated by the State through the institutional measures referred to above; (8) the technical assistance mission which visited the country in 2010 considered that the required social dialogue implied a substantial political agreement which the Government was seeking but which was facing difficulties both in terms of direction and in the demands based on legislative differences and certain hostile realities within the social partners’ own context, which hampered identification of a specific position on subjects on the agenda covering any issues raised by the ILO supervisory bodies with regard to the application of the Conventions; (9) despite these difficulties, the Government continues in the quest for committed tripartite social dialogue so that, without abandoning aspirations for greater social justice as identified by the Government’s policies, progress can be made towards the consensus needed to achieve greater compatibility with the observations made within the ILO supervisory system; and (10) accordingly, a tripartite working group has been established on 17 October 2012 with a view to establishing an agenda covering the subjects suggested by the technical assistance mission, in order to examine and determine possible means of action so as to improve conformity with the comments of the ILO supervisory bodies.

The Committee welcomes this information. As regards the Government’s statement that the Committee has not mentioned the positive developments with regard to freedom of association and collective bargaining, the Committee points out that it has included the case of Argentina among the cases of progress on several occasions in recent years (with respect to Convention No. 87 in 2001, 2010 and 2011; and with respect to Convention No. 98 in 2005). Nevertheless, the Committee wishes to point out that a number of problems persist and that at least one trade union federation refers to them each year.

The Committee recalls that the outstanding legislative issues are as follows:

#### *“Trade union status”*

- section 28 of the Act on trade union associations, 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 has pointed out that the requirement of a considerably larger membership, amounting to 10 per cent more members than the union currently holding most representative status, is unduly demanding and contrary to the Convention, since 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 has considered 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 has pointed out that, as emphasized by the Supreme Court of Justice of the Nation, “most representative” status should not imply, for the union that obtains it, 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 has therefore considered that this provision may adversely affect and unduly discriminate against organizations that are merely registered;
- sections 48 and 52 of the Act, which 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.

In its previous observations the Committee noted that the Supreme Court of Justice of the Nation and other national courts had declared some sections of the Act on trade union associations, which are the subject of comments by the Committee, to be unconstitutional. The Committee observes that the CTA refers to rulings by the courts of first and

second instance which declared sections 28, 29 and 30 of the Act on trade union associations, which were commented on by the Committee, to be unconstitutional. The Committee notes the Government's statement in its report that the rulings of the Supreme Court – apart from being applicable to specific cases – reflect the trend of strengthening the principles of freedom of association and that it also cannot be overlooked that these outcomes have contributed to the Government's policy with the reinforcement of social dialogue and the parameters for "labour citizenship". The Government also declares that the rulings issued by the Supreme Court have not called into question the model of uniqueness advocated by Act No. 23551.

*The Committee welcomes that the rulings handed down by the Supreme Court of Justice of the Nation and other national and provincial courts aim at solving some of the pending issues in conformity with the Convention. The Committee welcomes the establishment of the tripartite working group referred to by the Government and trusts that it will take the abovementioned rulings into account.*

*While noting the progress mentioned by the Government with regard to collective bargaining and wages, which the Committee welcomes, it firmly hopes that, further to tripartite examination of the pending issues with all the social partners, the necessary steps will be taken to bring the Act on trade union associations and its implementing decree into full conformity with the Convention. The Committee requests the Government to provide information in its next report on any measures taken in this respect.*

## Bahamas

### **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. 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 recalls that in its previous direct request it noted that the Labour Relations Act does not apply to the prison service (section 3) and requested the Government to guarantee these workers the right to organize. The Committee noted the Government's statement that it was currently reviewing the provisions of the Industrial Relations Act (IRA) with a view to address the right of prison staff to organize. *The Committee expresses the hope that the IRA will be amended in the near future so as to formally and expressly recognize the right to organize to prison staff and asks the Government to provide a copy of the amended text as soon as it has been adopted.*

*Right of workers and employers to establish organizations without previous authorization.* In its previous direct request, the Committee noted that, according to section 8(1)(e) of the IRA, the registrar shall refuse to register a trade union if he considers, after applying the rules for the registration of trade unions, that the union should not be registered. The rules for registration are provided in Schedule I. According to section 1 of the Schedule, in applying the rules of the registration of trade unions, the registrar shall exercise his discretion. The Committee noted the Government's statement that this provision is intended to ensure that there is no confusion or ambiguity regarding the rights of workers to certain information (finances and related matters) and that trade unions do not adopt names that are similar in nature and thereby confusing to the bargaining unit. As already stated, it is the Committee's view that provisions which confer on the competent authority a genuinely discretionary power to grant or reject a registration request, or to grant or withhold the approval required for the establishment and functioning of an organization, are 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, paragraph 74). *The Committee therefore asks the Government once again to take the necessary measures to ensure that no discretionary power is conferred to the registrar to refuse the registration of trade unions or employers' organizations and to provide information on any measures taken or envisaged in this respect.*

*Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules and to elect their representatives freely.* The Committee noted, in its previous direct request, that section 20(2) of the IRA, according to which the secret ballot for election or removal of trade union officers and for amendment of the constitution of trade unions should be taken under the supervision of the registrar or a designated officer, was contrary to the principles of freedom of association. The Committee noted the Government's statement to the effect that it concurs with the Committee's view regarding this section and that recommendation for its amendment is in the process of being submitted to Cabinet for consideration. *The Committee expresses the hope that concrete measures will be taken to amend section 20(2) of the IRA so as to ensure that trade unions could conduct a ballot without interference from the authorities. It requests the Government to indicate in its next report the measures taken or envisaged in this regard.*

The Committee notes that the constitution of every trade union should provide that executive committees and officers of trade unions should be elected at intervals not exceeding three years (section 9(4)(1) of Schedule I). *The Committee requests the Government to indicate whether this section implies that trade union officers cannot be re-elected for a consecutive term.*

The Committee notes that, according to section 9(4)(3) of Schedule I, the constitution of a trade union should include a provision to the effect that every officer must be a person who is legally entitled to be employed in the Bahamas in the industry, or as a member of the craft or category of employees, which the union represents. *The Committee requests the Government to clarify the meaning of this provision and, in particular, to indicate whether only nationals of the Bahamas can be elected to the posts of trade union officers.*

*Right to strike.* The Committee notes section 20(3) requiring a strike ballot to be taken under supervision by an officer of the ministry. If this section is not complied with, a strike is unlawful. The Committee considers that, with a view to ensuring freedom from any influence or pressure by the authorities, which might affect the exercise of the right to strike in practice, the legislation should not provide for supervision of a ballot by the authorities. *The Committee requests the Government to amend section 20(3) accordingly to the above principle and to indict any measures taken or envisaged in this respect.*

The Committee notes that, under the terms of section 73, the minister shall refer the dispute to the tribunal if the parties to the dispute, within non-essential services, failed to reach a settlement. It is unlawful to have recourse to strike action once the dispute is referred to the tribunal (section 77(1)). Furthermore, according to section 76(1), a strike which, in the opinion of the minister, affects or threatens the public interest, might be referred to the tribunal for settlement. The Committee recalls that compulsory arbitration to end a collective labour dispute and 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, even banned, i.e. in the case of a dispute in the public service involving public servants exercising authority in the name of the State, in the event of an acute national emergency, 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. **The Committee therefore requests the Government to take the necessary measures to amend its legislation so as to bring it into conformity with the Convention and to indicate any measures taken or envisaged in this respect.**

The Committee notes that section 75 restricts the objective of a strike. It appears to the Committee that protest and sympathy strikes are illegal under the terms of section 75. In the view of the Committee, 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. Furthermore, the Committee considers that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful (see General Survey, op. cit., paragraphs 165 and 168). **The Committee requests the Government to ensure the right of workers' organizations to recourse to this type of strike and to indicate any measures taken or envisaged in this respect.**

The Committee notes that, when a strike is organized or continued in violation of the abovementioned provisions, excessive sanctions, including imprisonment for up to two years are provided (sections 74(3), 75(3), 76(2)(b) and 77(2)). 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. **Therefore, the Committee requests the Government to amend the Labour Relations Act so as to bring it into conformity with freedom of association principles on this point.**

*Article 5. Right of organizations to establish federations and confederations and to affiliate with international organizations.* The Committee notes section 4 of Schedule I concerning the registration of federations, etc. **The Committee asks the Government to explain how this provision is applied in practice.**

The Committee notes section 39 concerning control of foreign connections of unions and federations. Under the terms of this section, it shall not be lawful for a trade union to be a member of any body constituted or organized outside the Bahamas without a licence from the minister, who has discretionary power to grant or refuse it and/or to accompany it with certain conditions. The Committee recalls that *Article 5* of the Convention stipulates that first-level organizations, as well as federations and confederations, have the right to affiliate with international organizations of workers and employers. Legislation which restricts the right of international affiliation by requiring prior authorization by the public authorities, or by permitting it only in certain conditions established by law, poses serious difficulties with regard to the Convention. **The Committee therefore requests the Government to take the necessary measures to amend its legislation so as to bring it into conformity with the Convention.**

**Finally, with reference to its previous direct request, the Committee once again requests the Government to provide information on the situation with regard to the draft Trade Union and Labour Relations Act and the draft Industrial Tribunal and Trade Disputes Act.**

**The Committee requests the Government to provide its comments on the issues raised above in its next report.**

**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 31 July 2012 on the application of the Convention. The Committee further notes the comments made by the International Organisation of Employers (IOE) on the right to strike in a communication dated 29 August 2012 which are dealt with in the General Report of the Committee.

## **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1976)**

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:

*Prison guards.* In its previous comments, the Committee had noted the Government's statement to the effect that measures to allow for the organization of prison guards were currently under consideration and that it was envisaged to review the relevant provision. **The Committee expressed the hope that, as the Government stated that amendments to the Industrial Relations Act (IRA) were under review, the future legislation would recognize prison guards' right to organize and to collective bargaining and asked the Government to inform it of developments in this regard.**

*Fire brigade workers.* The Committee had further noted the Government's view that, as far as the fire brigade was concerned, it was not desirable that its members be allowed to organize in view of the fact that it consisted exclusively of police officers, that is members of a disciplined force, who doubled as trained firefighters. **The Committee had requested the Government to clarify whether they were police agents which also had functions of firefighters or whether they were exclusively firefighters covered by police status.**

*Other questions.* The Committee had also regretted to note that the Government had not replied to the questions raised in its previous comments concerning *Article 2 of the Convention* (acts of interference). The Committee had requested the Government to adopt legislative provisions to protect workers' and employers' organizations against acts of interference by each other or each other's agents, accompanied by effective and sufficiently dissuasive sanctions. In a previous comment, the Committee had noted the Government's indication that provisions strengthening this protection were contained in the Trade

Unions and Industrial Relations Bill, 2000, a copy of which would be sent to the ILO after its adoption by the Legislative Assembly. *The Committee expressed the hope that the future legislation would guarantee an adequate protection against acts of interference and had requested the Government to keep it informed in this respect.*

*Representativeness for collective bargaining.* The Committee had also taken note of the comments on the application of the Convention submitted by the International Trade Union Confederation (ITUC) criticizing the requirement for a trade union to represent 50 per cent of the workers plus one in a unit in order to be recognized for bargaining purposes and the fact that an employer may, after 12 months of unsuccessful negotiations, apply for a union's recognition to be revoked (with some employers deliberately dragging out negotiations for that purpose). The ITUC added that the Government had failed to honour industrial agreements. *The Committee requested the Government to send its comments on the ITUC's observations.*

*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 ITUC dated 31 July 2012 which refer mostly to matters previously examined by the Committee.

## Bangladesh

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

*Workers' and employers' organizations' comments.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee notes the Government's reply to the comments submitted by the International Trade Union Confederation (ITUC) on 4 and 31 August 2011 concerning allegations of arrests, harassment and detention of trade unionists and trade union leaders, notably in the garment sector. In this respect, the Committee notes that the Government indicates that: (1) the police and the law-enforcing agencies did their duties pursuant to the law and, according to them, there have not been illegal threats, police harassment or arrest and detention of trade unionists, and no death or illegal arrest has happened intentionally; the victims, if any, were accused for their misdeeds and criminal activities; (2) the law enforcement agencies had to interrogate some violence-creating persons to protect public property and to clear the blockade organized in the garment sector, but they did not harass anyone, nor did they have the aim of harassing trade union leaders or disrupting trade union activities; (3) law enforcement agencies are performing their duties under directives and close supervision of the Ministry of Home Affairs; (4) as to the alleged killings in an export processing zone (EPZ), agitated workers attacked members of the police, some of whom were seriously injured as a result (the police used water cannon, tear-gas shells and rubber bullets and a worker died of a heart attack while passing nearby); and (5) workers and employers in the garment sector are not fully aware of the benefits of implementing the principles of the Convention and training should be provided to them in this regard. As to the alleged refusal by the Registrar of Trade Unions to register new unions, the Government indicates that, although trade union activities were totally stopped during the Emergency period (from January 2007 to December 2008), the Labour Act 2006 establishes some legal and reasonable requirements for union registration and, if these are fulfilled, there is no reason to refuse registration of new trade unions. This registration procedure is logical and justified to maintain the discipline in the industrial relations field.

With respect to its request to indicate the status of the court case concerning the Bangladesh Garments and Industrial Sramik Federation (BGIWF) registration, the Committee notes the Government's indication that the Department of Labour submitted the case for the cancellation of the registration of the BGIWF for violation of its constitution and unfair labour practice to the labour court in 2008 (No. 51 of 2008), that the case is still pending and that the next hearing will be on 18 September 2012. *In this respect, the Committee expresses the firm hope that the ongoing procedure will conclude in the near future and requests the Government to indicate in its next report the status of the registration of the BGIWF.*

The Committee notes the comments submitted by the ITUC on 31 July and 31 August 2012 concerning allegations of murder of a trade unionist, a union leader and two striking workers, violence and harassment of trade unionists in the pharmaceutical and EPZs, as well as the refusal to register unions in several sectors, including the telecom and garment sectors. *The Committee requests the Government to take the necessary measures without delay to carry out investigations concerning these serious allegations with a view to determining responsibilities and punishing those responsible, and to provide information in this respect.*

*Right to organize in EPZs.* In its previous comments, the Committee requested the Government to provide information and statistics on the number of workers' welfare associations (WWAs) established in EPZs and on steps taken to amend legislation so that EPZ workers may fully exercise the rights guaranteed by the Convention. In this respect, the Committee notes the Government's indication that referendums on WWAs were carried out in 246 out of 309 enterprises, and that 154 enterprises had formed WWAs up to 8 January 2012. The Government also states that these WWAs are actively performing their activities as collective bargaining agents. The Government indicates that the Bangladesh Export Processing Zone Authority (BEPZA) has been taking all the required steps to ensure the full implementation of the new EPZ Workers' Welfare Associations and Industrial Relations Act 2010 (EWWAIRA) by issuing letters and distributing the Act to enterprises of EPZs for establishing WWAs. The Committee notes the allegation of the ITUC that at their peak, there were roughly 90 WWAs in EPZs, and that it is not clear whether the results of the referendums are reliable and

reflect a fully informed vote on the part of the workers. The ITUC alleges that WWAs have been unable to function because employers failed to follow the law (e.g. refusing to provide meeting space, refusing to allow workers to hold meetings, refusing to review grievances, refusing to bargain) and BEPZA has failed to enforce it. The ITUC alleges that, as the initial trade union leaders have left or have been fired, new leaders have not taken their places. The ITUC further alleges that the formation of many WWAs in EPZs has been at the initiative of BEPZA which, through management of the affected enterprises, circulated a document to the workers to “demand” formation of WWAs; the entire procedure was allegedly effectively dictated by BEPZA in consultation with the respective employers. The ITUC claims that such a process is not consistent with workers’ right to establish and join organizations of their own choosing. ***The Committee requests the Government to provide its observations on the ITUC’s comments.***

The Committee further recalls that it had previously commented on the EPZ Workers’ Associations and Industrial Relations Act 2004, which contained numerous and significant restrictions and delays in relation to the right to organize in EPZs, and that it had noted with deep regret the adoption of the EWWAIRA which does not contain any real improvement in relation to the previous legislation and which does not address any of its previous comments.

***In these circumstances, the Committee once again requests the Government to take all the necessary measures to bring the following provisions of the EWWAIRA into conformity with the Convention:***

- section 16, which provides that a WWA will not be allowed in industrial units established after the commencement of the Act until a period of three months has expired after the start of commercial production in the concerned unit. The Committee notes the Government’s indication that this period is required for the initial understanding and preparation of both management and workers in order to ensure their rights and responsibilities;
- section 17(1), which provides that there can be no more than one WWA per industrial unit. The Committee notes the Government’s indication that this requirement ensures more discipline and more harmonious industrial management within a company;
- sections 6, 7, 9 and 12, which establish excessive and complicated minimum membership and referendum requirements for the establishment of a WWA (a WWA may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been verified by the Executive Chairperson of BEPZA, who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per cent of the eligible workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the WWA). The Committee notes the Government’s indication that sections 6, 7, 9 and 12 were introduced to ensure willingness and spontaneous participation of the workers in organizing referendums and to ensure more transparency and accountability;
- section 9(2), which confers excessive powers to the Executive Chairperson of BEPZA concerning the approval of the Constitution Drafting Committee of the WWA. The Committee notes the Government’s indication that the Executive Chairperson has always approved the Constitution Drafting Committee within five days, as required by section 9(2) which demonstrates that no excessive power is conferred to the Executive Chairperson;
- section 8, which prevents a referendum from being held for the establishment of a WWA in the workplace for a period of one year, after a first attempt failed to gather sufficient support. The Committee notes the Government’s indication that this delay is required to ensure proper understanding among the workers and organize them more effectively;
- section 27, which permits the deregistration of a WWA at the request of 30 per cent of the workers, even if they are not members of the association, and prevents the establishment of another WWA for one year after the previous one was deregistered. The Committee notes the Government’s indication that section 27 was enacted to prevent mala fide intentions, misleading and misuse of power by WWA members, which may affect workers’ welfare. To the knowledge of the Government, there has been no case of deregistration of a WWA;
- sections 28(1)(c), (e)–(h) and 34(1)(a), which provide for the cancellation of the registration of a WWA on grounds which do not appear to justify the severity of this sanction (such as violation of any of the provisions of the association’s constitution). The Committee notes the Government’s indication that the aim of section 28 is to safeguard the interest of the workers in general, to ensure a congenial atmosphere among the workers as well as smooth production in an enterprise. As to section 34, it ensures transparency and accountability of WWAs;
- section 46(3) and (4), which provides for severe restrictions of strike action, once authorized, and section 81(1) and (2) which establishes a total prohibition of industrial action in EPZs until 31 October 2013. The Committee notes that the Government indicates that section 46(3) and (4) has secured a smooth production atmosphere for greater interest of the company as well as workers;
- section 10(2), which prevents a WWA from obtaining or receiving any funds from any outside source without the prior approval of the Executive Chairperson of BEPZA;

- section 24(1), which establishes an excessively high minimum number of associations to establish a higher-level organization (more than 50 per cent of the WWAs in an EPZ), and section 24(3), which prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs;
- sections 20(1), 21 and 24(4), which do not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g. the procedure of election is to be determined by BEPZA); and
- section 80, which provides that WWAs are now prohibited from establishing any connection to any political parties or non-governmental organizations (NGOs). The Committee notes the Government's indication that since BEPZA encourages the welfare of all workers and addresses their grievances through industrial relations officials, counsellors, conciliators, arbitrators, EPZ labour tribunals and EPZ labour appellate tribunals, connections with NGOs and political parties may delay the process of settlement of grievances. Furthermore, the Government emphasizes that workers may approach directly the Executive Chairman of the BEPZA, the labour tribunal and the labour appellate tribunal for settlement of their complaints, if any. The Committee recalls once again that provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives, and provisions which restrict the freedom of trade unions to administer and utilize their funds as they wish for normal and lawful trade union purposes are contrary to the principles of freedom of association.

Moreover, the Committee noted section 38(4) concerning check-off facilities which stipulates that “the executive council at the beginning of the calendar year shall, with the accounts statement of the previous year, submit for approval the current year's revenue budget containing income expenditure to the Executive Chairman or to an officer authorized by him”. The Committee notes, once again, the Government's indication that this section will ensure the transparency and accountability of WWAs. ***The Committee once again requests the Government to indicate the scope of application of this new subsection 4 of section 38 and its impact on check-off facilities.***

The Committee further noted that a federation of WWAs cannot be legally formed until BEPZA has issued regulations. According to the ITUC, these regulations have yet to be issued. The Government indicates that, in order to streamline the formation of federations, BEPZA is preparing the necessary rules and regulations according to the Act. BEPZA has always supported the formation of WWA federations; but has yet to receive any formal request from a WWA to form a federation fulfilling requirements of the Act. ***The Committee once again requests the Government to indicate the measures taken or envisaged to issue the regulations concerning the right of WWAs to establish and join federations, in accordance with Article 5 of the Convention.***

*Other discrepancies between national legislation and the Convention.* In previous comments, the Committee noted the adoption of the Bangladesh Labour Act 2006 (the Labour Act), which replaced the Industrial Relations Ordinance of 1969, and noted with deep regret that the Labour Act did not contain any improvements and, in certain regards, contained even further restrictions which were contrary to the provisions of the Convention. The Committee took note of the Government's statement that a tripartite labour law review committee to identify the gaps and discrepancies in the Labour Act and suggest the necessary amendments had been constituted. The Committee notes that the Government indicates that the revision of the Labour Act with comments of all levels of stakeholders is under process by a 22-member high-power Tripartite Labour Law Review Committee (TLRQ) headed by the State Minister of Labour and Employment. The draft amendments have been submitted to the Tripartite Consultative Council (TCC) on 9 February 2012. The Committee notes that some of the proposed amendments would provide improvements to the current Labour Act (for example, by including “research institutions” into the scope of application of the Labour Act (section 1(4)); by repealing the provision requiring the Director of Labour to send the list of officers of a trade union to the employer (section 178(3)); and by offering the possibility of electing up to 20 per cent of the members of an executive committee from persons not employed in the establishment where the trade union is formed (section 180(b))). However, the proposed amendments do not take into account most of the observations previously raised by the Committee. The Government indicates that the draft amendments are being reviewed further and will be submitted again to the TCC for finalization. ***In these circumstances, the Committee expresses the firm hope that the review process of the Labour Act referred to above will be finalized in the near future and will take into account the following discrepancies between the Labour Act and the Convention:***

- the need to repeal provisions excluding managerial and administrative employees from the right to establish workers' organizations (section 2(49) and (65) of the Labour Act) as well as new restrictions of the right to organize of firefighting staff, telex operators, fax operators and cipher assistants (exclusion from the provisions of the Act based on section 175). The Committee notes that the Government indicates that telex and fax operators are allowed to exercise their trade union rights. ***The Committee requests the Government to indicate the legal provisions that grant trade union rights to the abovementioned workers;***
- the need to either amend section 1(4) or adopt new legislation so as to ensure that the workers excluded in relation to trade union rights from Chapters XIII and XIV of the Labour Act enjoy the right to organize. The Committee notes the Government's indication that sectors which have been excluded from the operation of the Act have been excluded in the interests of security, public administration and smooth environment and that the country is not in a position to amend section 1(4) considering the socio-economic, cultural and environment situation and practices;



- the need to repeal provisions which restrict membership in trade unions and participation in trade union elections of those workers who are currently employed in an establishment or group of establishments, including seafarers engaged in merchant shipping (sections 2(65), 175 and 185(2));
- the need to repeal or amend new provisions which define as an unfair labour practice on the part of a worker or trade union an act aimed at “intimidating” any person to become, continue to be or cease to be a trade union member or officer, or “inducing” any person to cease to be a member or officer of a trade union by conferring or offering to confer any advantage, and the consequent penalty of imprisonment for such acts (sections 196(2)(a) and (b) and 291). The Committee notes that the Government considers section 196(2)(a) and (b) to be justified in the national context where there is competition in enrolling members of trade unions that results in bloodshed, clashes and litigation. In order to prevent such untoward situations and to restore peace and a good environment, the Government considers these provisions to be *sine qua non*;
- the need to repeal provisions which prevent workers from running for trade union office if they were previously convicted for compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand by using intimidation, pressure, threats, etc. (sections 196(2)(d) and 180(1)(a));
- the need to lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, as well as the possibility of deregistration if the membership falls below this number (sections 179(2) and 190(f)); the need to repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5)) and that only one trade union of seafarers shall be registered (section 185(3)); and the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300);
- the need to modify section 179(1) which lists excessive requirements that must appear in the content of the constitution of a trade union in order for it to be entitled for registration;
- the need to amend section 190(e) and (g) which provides that the registration of a trade union may be cancelled by the Director of Labour if the trade union committed any unfair labour practice or contravened any of the provisions of Chapter XIII of the Rules. The Committee considers that, while the decision of the Director of Labour can be appealed before the tribunal (section 191) which will have to apply the legislation in force, the criteria for dissolution are too broad and involve serious risks of interference by the authorities in the existence of trade unions;
- the need to amend section 202(22) which provides that if any contesting trade union receives less than 10 per cent of the votes for the election of the collective bargaining agent, the registration of that union should be cancelled. The Committee considers that, while the 10 per cent requirement may not be deemed excessive for the certification of a collective bargaining agent, trade unions which do not gather 10 per cent of workers should not be deregistered and should be able to continue to represent their members (for instance, making representations on their behalf, including representing them in case of individual grievances);
- the need to amend section 317(d), which empowers the Director of Labour to supervise the election of trade union executives, so as to allow organizations to freely elect their representatives;
- the need to repeal provisions denying the right of unregistered unions to collect funds (section 192) upon penalty of imprisonment (section 299);
- the need to modify section 184(1), which provides that workers engaged in any specialized and skilled trade, occupation or service in the field of civil aviation may form a trade union if such union is necessary for affiliation with an international organization in the same field, and section 184(4) which provides that the registration should be cancelled within six months if the trade union is not affiliated to the international organization concerned;
- the need to amend sections 202(24)(c) and (e) and 204 which provide the collective bargaining agent in an establishment with some preferential rights (such as the right to declare a strike, to conduct cases on behalf of any individual worker or group of workers, and the right to check-off facilities), so that the distinction between a collective bargaining agent and other trade unions is limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations), in order for the distinction not to have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means for defending the occupational interests of their members for organizing their administration and activities, and formulating their programmes;
- the need to lift several restrictions on the right to strike (concerning the majority required to consent to a strike (sections 211(1) and 227 (c)); the prohibition of strikes which last more than 30 days (sections 211(3) and 227(c)); the possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c)) or if it involves certain services (sections 211(4) and 227(c)); the prohibition of strikes for a period of three years in certain establishments (sections 211(8) and 227(c)); the penalties (sections 196(2)(e), 291 and 294–296); and interference in trade union matters (section 229));

- the need to amend section 301, which imposes a penalty of imprisonment for failure to appear before the conciliator in the framework of settlement of industrial disputes;
- the need to amend section 183(1), which provides that in a group of establishments no more than one trade union can be formed, so as to allow workers in any establishment or group of establishments to form organizations of their own choosing; and the need to amend section 184(2) which provides that only one trade union can be formed in each trade, occupation or service in a civil aviation establishment and if at least half of the total number of workers concerned apply in writing for registration. The Committee considers that the existence of an organization in a specific enterprise, trade, establishment, economic category or occupation should not constitute an obstacle for the establishment of another organization; and
- concerning the draft amendment, the need to modify section 200(1) of the draft amendments which provides that any five or more trade unions, registered in more than one administrative division and formed in establishments engaged, or carrying on, in a similar or identical industry may constitute a federation, so that: (1) the requirement of an excessively high minimum number of trade unions to establish a federation does not infringe the right of trade unions to establish and join federations of their own choosing; (2) workers have the right to establish federations of a broader occupational or interoccupational coverage; and (3) trade unions should not need to belong to more than one administrative division in order to federate.

Finally, the Committee had previously requested the Government to indicate whether rule 10 of the Industrial Relations Rules 1977 (IRR), which previously granted the Registrar overly broad authority to enter trade union offices, inspect documents, etc. without judicial review, had been repealed by the entry into force of the Labour Act 2006. The Committee noted that the Government stated, in this regard, that rule 10 of the IRR remains valid, and that – as its purpose was to maintain discipline in trade union administrations – it was not in favour of repealing the said provision. The Government further indicated that the workers’ representatives in the tripartite review process towards the enactment of the Labour Act had raised no objections to the Registrar’s authority in these matters. The Government further indicates in its report that if any union or federation is aggrieved about the procedure and verification by the Registrar, it can appeal to the labour court. The Government adds that the Registrar does not go to the office of a trade union or federation for inspection unless their secretary or president applies to the Registrar for removal of irregularities, which is frequent. The Committee once again recalls that the right of workers’ and employers’ organizations to organize their administration without interference by the public authorities includes, in particular, autonomy and financial independence and the protection of the assets and property of these organizations. There is no violation of the Convention if such verification is limited to exceptional cases, for example in order to investigate a complaint, or if there have been allegations of embezzlement. Both the substance and the procedure of such verifications should however always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 124 and 125). ***The Committee once again requests the Government to take the necessary measures to repeal rule 10 of the IRR or amend it so as to ensure that this provision granting the Registrar authority to supervise trade union internal affairs is in line with the principles mentioned above.***

***The Committee takes due note once again of the Government’s statement that it is fully committed to ensuring compliance with the Convention and the promotion of freedom of association in the country, and expects that all measures will be taken to bring the legislation into conformity with the Convention.***

***The Committee once again invites the Government to avail itself of the technical assistance of the Office in respect of all the matters raised above.***

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

***Articles 1 and 3 of the Convention. Protection of workers in export processing zones (EPZs) against anti-union discrimination.*** In its previous comments, the Committee had noted the comments submitted by the International Trade Union Confederation (ITUC) on 4 and 31 August 2011, concerning the dismissal of more than 5,000 employees in the garment sector in 2010 following their exercise of their trade union rights as well as several cases in which the leaders of worker welfare associations have been fired in retaliation for the exercise of trade union rights. The Committee notes the Government’s indication that the number of 5,000 fired garment workers is not based on findings of any survey nor is it established by research. It states that this type of exaggerated figure not only misleads the policy-makers but creates perplexity in the minds of all concerned. The Government indicates that the conflicts that have led to the dismissal of several leaders of worker welfare associations have been resolved. It further explains that in one case, the dismissed workers were involved in illegal activities and that a criminal case has been filed against them (345/2011, under trial at the Chief Judicial Magistrate Court, Dinajpur). ***The Committee requests the Government to provide information on the judicial proceedings in Case No. 345/2011.***

Moreover, the Committee had noted that 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 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 noted that in August 2010, the Parliament passed the EPZ Workers' Welfare Associations and Industrial Relations Act 2010 (EWWAIRA) which provides for the establishment of an EPZ Labour Tribunal and a Labour Appellate Tribunal. The Committee notes the Government's indication that these bodies have been set up by notifications published in the *Official Gazette* on 16 August 2011. ***The Committee requests the Government to provide in its next report: (i) statistics on the number of complaints of anti-union discrimination presented by workers in the EPZs before the EPZ Labour Tribunal and the Labour Appellate Tribunal; (ii) a summary of the decisions reached by the two tribunals, including any remedies awarded; and (iii) a copy of the notifications published in the Official Gazette on 16 August 2011.***

The Committee further noted that the Government indicated in its report that the intervention of counsellors is well established in all EPZs to deal with employees' grievances (e.g. harassment, dismissal, violence) and that conciliators and arbitrators have the power to resolve disputes after counsellors, as per sections 40–45 of the EWWAIRA 2010. However, the Committee noted that according to the ITUC's 2011 comments, the Bangladesh Export Processing Zones Authority (BEPZA) had not yet appointed new conciliators (when the 2004 Act expired, the Government did not extend the tenure of the EPZ conciliator who was appointed under that act) as required under the EWWAIRA 2010, thus hampering industrial dispute resolution in the EPZs. The Committee notes the Government's indication that 60 counsellors work in different industries of different zones since 1 June 2005 to implement the EWWAIRA. It further notes the indication of the Government that it will appoint conciliators as soon as the "EPZ Workers' Welfare and Industrial Relations Fund, Constitution and Operation Policy" is approved. General Managers, Officers of the Industrial Relations Department, and counsellors of the respective zones are scheduling frequent hearings between management and workers to mitigate problems. As a result, the Government indicates that the rate of grievances has reduced remarkably. ***The Committee requests the Government to provide information on the approval of the "EPZ Workers' Welfare and Industrial Relations Fund, Constitution and Operation Policy" and on the appointment of conciliators.***

*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 noted 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 for a prison term which may extend to two years or with a fine of up to 10,000 Bangladeshi taka (BDT), or both. The Committee notes that amendments to the Labour Act have been submitted to the Tripartite Consultative Council (TCC) on 9 February 2012. It notes that the proposed amendments do not seem to contain 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 such a prohibition will be included in the amendments and once again requests the Government to send the latest draft amendments and to provide information on developments in this regard, including on the enactment of the proposed provisions and any complaints filed under them.***

*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 recalled 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 notes the Government's indication that the 30 per cent requirement opens the opportunity to workers to form three trade unions in an establishment and to join any of these trade unions. The Committee noted that the Government indicates in its report that the percentage requirement in section 202(15) has been repealed and that it is the trade union that secures the highest number of votes that is declared as the collective bargaining agent. In this regard, the Committee refers to its observations under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee further noted that according to the National Level Trade Union Federation of Workers (NCCWE), collective bargaining is limited as there is no legal provision for collective bargaining at the industry, sector or national levels. In this regard, the Committee noted the Government's indications that: (i) sections 202 and 203 of the Labour Act, 2006, directly concerns collective bargaining; (ii) the settlement of disputes through bipartite negotiations is done at the industry level and that similarly, different issues are settled through bipartite negotiation or through conciliation at the sector level, such as tea sector, shrimp sector, etc.; (iii) collective bargaining was also done at the national level through

consultation with the Workers' Federation but such practice no longer prevails; and (iv) there are currently 7,297 trade unions registered with the Department of Labour, 32 national federations, 112 industrial federations and 36 garments industries federations and a total of 11 collective bargaining agreements. The Committee notes that the proposed amendments to the Labour Act, 2006, which will be examined again by a Tripartite Consultative Council (TCC), do not concern sections 202 and 203. ***The Committee once again requests the Government to amend sections 202 and 203 of the Labour Act, 2006, in order to provide clearly that collective bargaining is possible at the industry, sector and national levels. The Committee once again requests the Government to provide statistics on the number of collective agreements concluded at the industry, sector and national levels respectively in its next report.***

*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 in October 2011, there were 302 enterprises eligible for Workers Welfare Associations (WWAs) among 368 in operation and that workers' associations referendums were held in 208 enterprises. Elections of WWAs were held in 146 enterprises and WWAs were formed. The activities of all executive committees of WWAs include being collective bargaining agents. However, no information was provided by the Government concerning the conclusion of collective agreements in the EPZs. The Committee noted that according to the ITUC, while elected WWAs (what, according to the ITUC, substitutes for trade unions in the absence of a legal right to form one) in the EPZs have been established, employers have failed to take the next step and bargain collectively as required by the EWWAIRA 2010. ***The Committee therefore requests the Government once again 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.***

The Committee further noted that according to the ITUC, there has been little progress on collective bargaining in the EPZs and that this is largely due to the BEPZA's insistence that there is no room for collective bargaining on any working conditions above the minimum standards already established in the Labour Act and the BEPZA Instructions 1 and 2. The ITUC added that this largely eviscerates the bargaining provisions of the EWWAIRA 2010 and leaves no room for collective bargaining. ***The Committee recalls that excluding wages, working hours, rest periods, leave and conditions of works from the field of collective bargaining is not in harmony with Article 4 of the Convention. The Committee requests the Government once again to ensure that this principle is applied in practice in the EPZs and to provide a copy of the BEPZA Instructions 1 and 2.***

*Articles 4 and 6. 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 noted that the Government indicated 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, considered that simple consultation with unions of public servants not engaged in the administration of the State does not meet the requirements of *Article 4* of the Convention. The Committee underlines that the Government has not referred to any collective agreement in the public sector. ***The Committee therefore once again urges the Government to take the necessary measures, legislative or not, 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 simple consultation in 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 and to provide statistics on the number and nature of collective agreements concluded in the public sector.***

## Barbados

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

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

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. 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 indicated that the administrative authority has 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.*

Furthermore, 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 had noted that the Government indicated 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.*

*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: 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 comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 indicating that the right to collective bargaining has still not been regulated by law, stripping the mechanism of its effectiveness and that legislation tolerating certain anti-union practices, such as dismissal for union activities, is also still in place. The Committee also notes the comments submitted by the Barbados Workers' Union (BWU) in a communication dated 1 September 2011 concerning issues already raised by the Committee. *The Committee requests the Government to provide its observations thereon.*

*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 had noted 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 US\$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 again the importance of making sanctions sufficiently dissuasive against acts of anti-union discrimination or interference. The Committee had previously noted with interest that the Government indicated that it was 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.*

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.*

## **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 comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 31 July 2012 alleging numerous violations of the Convention, including arrest and detention of members of independent trade unions, denial of the right to picket, denial of registration of primary trade unions, and interference by the authorities in trade union activities. The Committee notes with *concern* the ITUC's statement that the recommendations of the Commission of Inquiry are still not implemented and that no real effort has been made by the Government to address violations of trade union rights in the country. *The Committee requests the Government to provide detailed observations on the ITUC's allegations.*

The Committee notes with *regret* that the Government's report contains no new information on the measures taken to implement the 2004 recommendations of the Commission of Inquiry and this Committee's previous requests in respect of the application of the Convention. The Committee also notes the 366th Report of the Committee on Freedom of Association (November 2012) on the measures taken by the Government of the Republic of Belarus to implement the

recommendations of the Commission of Inquiry. It notes, in particular, that the Committee on Freedom of Association expressed its deep concern at the Government's lack of cooperation in providing information on the follow-up given to the Commission of Inquiry recommendations. ***The Committee urges the Government to cooperate fully with the ILO supervisory bodies.***

*Article 2 of the Convention. Right to establish workers' organizations.* The Committee recalls that in its previous observations it had urged the Government to take the necessary measures to amend 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 with ***deep regret*** that no information has been provided by the Government in this respect. In this connection, the Committee notes with ***concern*** the ITUC's allegation that the management of "Granit" enterprise refuses to provide a newly established primary organization of the Belarus Independent Trade Union (BITU) with the legal address required, pursuant to Decree No. 2, for registration of trade unions. In this respect, the Committee notes the Government's indication that the enterprise management acted in accordance with the law as the BITU failed to submit the minutes of the founding meeting. The Government indicates that on 17 May 2012, the Belarusian Congress of Democratic Trade Unions (CDTU) filed a complaint with the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere. The Government points out that the minutes of the founding meeting submitted to the Council were signed only by 16 people, whereas 200 employees were said to have expressed a wish to join the BITU. Furthermore, some employees have stated that union representatives deceived them into signing the papers, without giving adequate explanations of the demands made to the employer. The Government indicates that the Council's secretariat is currently awaiting more information from the CDTU. The Committee recalls that the abovementioned 10 per cent minimum membership requirement is not applicable to primary trade unions and understands that the decision even by 16 workers would be sufficient to establish a primary trade union. In the light of the above, the Committee expresses its ***concern*** that the requirements imposed by Decree No. 2 continue to hinder the establishment and functioning of trade unions in practice. The Committee notes with ***deep regret*** that, despite the numerous requests by the ILO supervisory bodies, there have been no tangible measures taken by the Government to amend the decree, nor have there been any concrete proposals to that effect. ***The Committee therefore once again urges the Government to take the necessary measures 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 provide information on all progress made in this respect. The Committee hopes that the BITU primary trade union at "Granit" enterprise will be registered without delay and requests the Government to take all necessary measures to that end.***

The Committee ***regrets*** that the Government provides no information concerning the allegation previously submitted by the CDTU on the refusal by the Polotsk municipality to register the free trade union primary organization of "Self-employed workers at Polotsk outdoor collective farm market". ***It therefore expects that the Government's next report will contain detailed observations thereon.***

The Committee had previously requested the Government to indicate whether the BITU had applied for the registration of its primary trade union at "Kupalinka" enterprise and, if so, the outcome of the registration procedure. It further requested the Government to provide a copy of the Supreme Court decision in the case of refusal to register "Razam" organization. The Committee notes the Government's indication that the BITU has not applied for registration of its primary trade union. The Committee further notes a copy of the Supreme Court's decision in the "Razam" case and understands that by its decision, the court left without examination the case of refusal to register "Razam" organization submitted by three petitioners. According to the court, pursuant to Decree No. 2, at least 500 founding members from the majority of regions are needed in order to establish a trade union at the national level; this implies that only founding members could be given the authority to represent the interests of the union in the process of registration or in court. The court considered that the decision by the founding conference to admit to trade union membership one of the petitioners, to elect him or her to the union's office and to mandate him or her to represent, together with other persons, the interests of the union before the registering authorities and the courts was without any legal ground. The Committee expresses its ***concern*** at this new interpretation of paragraph 3 of Decree No. 2, which appears to create additional obstacles to registration and impede the right of trade unions to elect their representatives and to organize their administration in full freedom enshrined in *Article 3* of the Convention. ***In view of the above, the Committee once again 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. Right of workers' organizations, including federations and confederations, to organize their activities.* 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 demonstrations and meetings and requested the Government to conduct independent investigations into these allegations, as well as to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations to defend their occupational interests. The Committee once again notes with ***deep regret*** that no information has been provided by the Government in this respect. ***Recalling that peaceful protests are protected by the principles of freedom of association and that public meetings and demonstrations should not be arbitrarily refused, the Committee urges the Government to indicate the measures taken to investigate the alleged cases of refusals to authorize the holding of demonstrations and***

*meetings and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations to defend their occupational interests.*

The Committee recalls that it had previously noted with concern the CDTU's allegation that following a refusal by the "Delta Style" company's management to authorize a trade union meeting, the chairperson of the Soligorsk BITU regional organization met with several women workers (on their way to their workplaces) near the entrance. Following this event, the chairperson was detained by 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 Act on Mass Activities. The Committee had requested the Government to provide its observations on the facts alleged by the CDTU. The Committee *regrets* that the Government has provided no information in this respect. *It therefore once again urges the Government to provide its observations thereon.*

In this connection, the Committee recalls that for a number of years it has been requesting the Government to amend the Act on Mass Activities, which imposes restrictions on mass activities and provides for dissolution of an organization for a single breach of its provisions, while organizers may be charged with a violation of the Administrative Code and thus subject to administrative detention. The Committee *deeply regrets* that once again no information has been provided by the Government on concrete measures taken in this respect. The Committee understands, however, that this piece of legislation has been amended so as to further restrict the right to organize public events. *The Committee requests the Government to provide a copy of these amendments.*

The Committee further *deeply 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. *Recalling that the abovementioned legislative texts (Act on Mass Activities, Presidential 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 eight years ago, the Committee reiterates its previous requests and requests the Government to indicate all concrete measures taken or envisaged in this respect.* The Committee understands that the Act on Public Associations and the Criminal Code have been recently amended and that these amendments would have bearing on the application of the Convention. *The Committee requests the Government to provide copies of all relevant amendments to these legislative texts.*

*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 notes with *deep regret* that no 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 therefore urges the Government to intensify its efforts to ensure that freedom of association and respect for civil liberties 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.*

## Botswana

### **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 31 July 2012 concerning issues already raised by the Committee.

The Committee further notes the information provided by the Government in response to the comments made by Education International (EI) in a communication dated 19 September 2011 concerning the Public Service Act, the status of the Bargaining Council and the unilateral determination and changes of the terms and conditions of employment in the public sector (in matters that should be left to the parties), through the issuance of Statutory Instrument No. 50 of 2011. The Committee notes in particular that the Government states that: (1) the Public Service Act implementation was initiated in May 2010 and some other issues need to be completed; (2) the Bargaining Council, established and registered in August 2011, is now operational; and (3) the issue of the Statutory Instrument No. 50 of 2011 was heard before the courts that held that the Public Service Act empowers the President to make regulations for conditions of service for public service employee, and therefore the President acted lawfully in promulgating the said statutory instrument. *The Committee notes that the Statutory Instrument No. 50 of 2011 has not been received and requests the Government to supply a copy.*

It 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. In addition, in the case of negotiations in the public or semi-public sector, intervention by the authorities is compatible with the Convention in so far as it leaves a significant role to collective bargaining. Measures which unilaterally fix conditions of employment should be of an exceptional nature, be limited in time and include safeguards for the workers who are the most affected (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 262 and 265). ***The Committee once again requests the Government to ensure that the Statutory Instrument No. 50 of 2011 is in conformity with this principle. The Committee requests the Government to examine this issue in full consultation with the most representative organizations and to provide information on the results of this dialogue.***

*Legislative issues.* The Committee recalls that for many years it had been commenting on several legislative dispositions contrary to the Convention.

*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 had noted that in its previous report the Government had 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, and their terms and conditions of employment. However, the Committee noted 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 anybody affiliated to a trade union shall be liable to be dismissed from the service. The Committee notes that the Government indicates in its report that this matter is of national interest and thus wider consultations have to be undertaken with relevant Government departments, social partners and other stakeholders. 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. ***The Committee requests the Government to provide information on the abovementioned consultations and hopes that the Trade Disputes Act, the TUEO Act and the Prison Act will soon be amended so as to ensure prison staff the rights enshrined in the Convention.***

*Article 1 of the Convention.* 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 Committee notes that the Government indicates that: (1) section 23 of the Employment Act has been amended to strengthen it by including more grounds that restrict termination of employment which include gender, health status, sexual orientation and disability; and (2) the Act was further amended by inserting a new paragraph (e) to provide a general provision on non-discrimination during termination of employment. The Committee recalls the importance that the legislation prohibits and sanctions specifically all acts of anti-union discrimination as set out in *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 and specific 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 Committee notes that the Government indicates in its report that this issue will be considered in future amendments.
- 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. The Committee notes that the Government indicates that this issue will be considered in future amendments.
- 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 that the Government indicates that: (1) work is ongoing to review the Trade Disputes Act; (2) it recognizes the need to have an independent dispute resolution mechanism that was planned for in the National Development Plan 10 which runs from 2009 to 2016; and (3) due to the economic downturn, the project was shelved.



***The Committee requests the Government to continue to provide information on any progress made in relation to the abovementioned requested amendments and it encourages the Government to avail itself of the technical assistance of the Office if it so wishes.***

*ITUC's comments. Section 35(1)(b) of the Trade Disputes Act.* The Committee noted 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 noted the Government's indication that in terms of section 48 of the TUEO Act as read with section 32 of the Trade Disputes Act, the minimum threshold to be recognized by the employer is set at one third of the workforce of any organization. The Committee notes that the Government indicates that: (1) the law authorizes the unions to join forces with others to form one third of the workforce in order to bargain collectively; and (2) the Committee's comments have been noted and will be considered. 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 once again the Government to take the necessary measures 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.***

*Capacity building and implementation gap.* The Committee notes the "induction and negotiation skills workshop (of tripartite nature) for the Public Service Bargaining Council (PSBC)" held in August 2012 aimed at: (1) fully sensitize PSBC members on their role and function in the Council; (2) enable them to appreciate the application of collective bargaining in the context of public service; and (3) enhance their negotiation skills. The Committee also notes, from the report of an ILO mission held in the country in September 2012, that it was agreed during discussions between the Botswana delegation and the ILO during the International Labour Conference in June 2012, that: (1) efforts would be geared towards improving freedom of association standards; and (2) the activities in this regard are planned to take place at the end of January 2013, pending confirmation by the Ministry of Labour. The Recommendations adopted during the mission refer to the importance to start addressing the comments of the Committee with, as the main focus, the legal revision process, as a number of comments point out a gap in the national legislation. ***The Committee requests the Government to continue to provide information concerning the possible legal revision process abovementioned and, in particular, in relation to the points raised in the present observation.***

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) of 31 July 2012 concerning the application of the Convention, and particularly mass dismissal of trade unionists from the public sector and interference by employers and the authorities in trade union activities.

*Article 1 of the Convention. Application of the Convention to prison staff.* In its previous comments, the Committee noted that the Public Service Act, the Trade Union and Employers' Organizations Act (TUEO), as amended in 2003, and the Trade Disputes Act did not apply to the Botswana prison service. It also noted the Government's statement that national laws define the prison service as a security service. The Committee notes the Government's indication in its report that: (1) the Trade Disputes Act is under review with the technical assistance of the Office; (2) consultations on this subject are also being held; and (3) the Committee's requests have been noted and will be taken into consideration. Furthermore, the Committee notes that, in its report on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Government indicates that this issue is of national interest and that wider consultation is necessary with the ministries concerned, the social partners and other stakeholders. The Committee recalls that under *Article 1* of the Convention, only the police, the armed forces and 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 application of the Convention. ***The Committee hopes that the Public Service Act, the TUEO and the Trade Disputes Act will be amended in the near future to ensure that the prison service enjoys the rights enshrined in the Convention, and urges the Government to provide information on any developments in this regard.***

*Article 5. Protection against acts of interference.* In its previous requests, the Committee indicated that the current legislation does not ensure adequate protection to public employees' organizations against acts of interference by public authorities in their establishment, functioning or administration. The Committee also noted the Government's indication that the Public Service Act was being reviewed and that the Committee's comments would be taken into account. The Committee notes that, in its report, the Government repeats its previous statements, adding that the Cabinet authorized the amendment of the Act by Presidential Decree of 7 June 2012. ***The Committee hopes that the Government will soon be in a position to report progress in the revision of the Public Service Act and recalls that the Government may, if it so wishes, avail itself of ILO technical assistance in this regard. The Committee urges the Government to provide information on any developments in this regard.***

## Bulgaria

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 31 July 2012 concerning issues already raised. The Committee also notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

*Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes.* The Committee recalls that for a number of years it has been raising the need to amend the following provisions: (1) section 11(2) of the Collective Labour Disputes Settlement Act, which provides that the decision to call a strike shall be taken by a simple majority of the workers in the enterprise or the unit concerned; (2) 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; and (3) section 47 of the Civil Servant Act, which restricts the right to strike of public civil servants, other than those engaged in the administration of the State.

The Committee notes that the Government indicates in its report that: (1) with regard to the strike vote, no amendments to the legislation were made; (2) on the issue of the right to strike in the railway transport sector, the Ministry of Transport expressed its consent to amend the Act on Railway Transport in December 2008, and proposed a text to be used for the law amendment purposes. Nevertheless, given the situation in the railway transport, the Ministry afterwards notified that any such proposals needed to be postponed; and (3) concerning the right to strike of civil servants, proposals were drawn up to introduce legislative amendments to the Civil Servant Act and were included in a report of the Minister of Labour and Social Policy, which was presented to the Council of Ministers, thus obtaining its material consent to the proposed amendments. Nevertheless, the process of proposing amendments to the Civil Servant Act was still ongoing, and it was therefore necessary to postpone the discussion of those amendments for 2012.

*The Committee hopes once again that due account will be taken of its comments in the process of legislative amendments. The Committee requests the Government to provide information on any development in this respect in its next report. It reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) on 4 August 2011 and 31 July 2012, concerning the dismissal of trade union leaders in several enterprises. *The Committee requests the Government to provide its observations thereon.*

*Article 1 of the Convention. Protection of workers against acts of anti-union discrimination.* The Committee in its latest observation has requested the Government to supply information regarding the average length of anti-union discrimination proceedings in practice and the compensations paid or sanctions imposed in case of anti-union dismissals, and to indicate the status of the process of establishing specialized labour courts. This request was based on the previous comments received from the ITUC and the Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB), which indicated that legal proceedings for the reinstatement of dismissed workers can take a long time and sometimes even years, and that the sanctions against employers for unfair dismissal are too weak to be dissuasive.

The Committee notes the detailed information provided by the Government with regard to the amended Civil Procedure Code in 2010, and especially, with regard to the provisions on the summary labour procedure being now applied to cases concerning illegal dismissals. The Committee welcomes the information provided by the Government that the summary procedure may now be ruled on definitively within a reasonable period of six months. *Nevertheless, the Committee invites the Government to compile data on the average duration in practice of court proceedings related to discrimination on the grounds of trade union activities, including appeals procedures and also on the average compensation paid and sanctions imposed, and to communicate this information in its next report.*

*Article 2. Protection against acts of interference.* The Committee had previously noted that national legislation does not provide full protection against acts of interference by employers or employers' organizations and has requested the Government to indicate the legislative measures taken or envisaged to ensure adequate protection, including by means of dissuasive sanctions, against such acts of interference.

The Committee notes that no amendments to the legislation were made according to the information provided in the Government's report. The Committee therefore recalls that under *Article 2* of the Convention, all acts which are designed to promote the establishments 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 reminds that national legislation should explicitly prohibit all such acts of interference and make express provision for rapid appeal procedures, coupled with dissuasive sanctions against acts of interference, in order to ensure the application in practice of *Article 2*.

**Therefore, the Committee again requests the Government to take the necessary measures in order to modify the national legislation accordingly and ensure the application of Article 2 as indicated, and to meanwhile provide information about the steps taken towards an adequate protection against such acts of interference.**

*Article 4. Promotion of free and voluntary collective bargaining.* The Committee has requested article 51(b)(1) and (2) of the Labour Code to be amended in order to enable representative organizations of workers and employers to bargain collectively and to conclude collective agreements in sectorial and branch level without the need to be affiliated to a national representative organization, and thereby, comply with the requirements of *Article 4* of the Convention. The Committee notes with **satisfaction** that, according to the government report, amendments were made to article 51(b)(1) and (2) of the Labour Code, which no longer mentions the need to be affiliated to a national representative organization in order to be entitled to collective bargaining.

*Articles 4 and 6. Collective bargaining in the public sector.* The Committee has previously taken note of the comments made by the ITUC and the KNSB/CITUB regarding collective bargaining rights of public servants and requested the Government to amend the Civil Service Act so that the right to collective bargaining of all public service workers, other than those engaged in the administration of the State, is duly recognized in the national legislation.

The Committee observes that the Government states that an interdepartmental work group was set up with the mission to develop amendments to the Law on Railway Transport and the Civil Service Act in order to meet the standards of the International Labour Organization; these proposals were drawn up to introduce legislative amendments to the Civil Service Act and were included in a report of the Minister of Labour and Social Policy which was presented to the Council of Ministers achieving thereon its material consent to the proposed amendments. The Committee takes note that, according to the Government, the process of proposing amendments to the Civil Servant Act is still open and that the discussion of those amendments needs to be postponed for 2012. **In these circumstances the Committee expresses the firm hope that the Civil Servant Act will soon be brought into accordance with the requirements of the Convention. The Committee requests the Government to inform on the evolution of the process and to include the text of the amended Articles in one of the ILO's official working languages in its next report.**

## Burkina Faso

### **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 Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee also notes the comments of 31 July 2012 by the International Trade Union Confederation (ITUC), which refer to legislative issues already raised by the Committee and to violations of trade union rights in practice, in particular dismissals of strikers, police repression of a demonstration organized during a strike and threats against a union leader. **While noting the Government's reply to earlier comments by the ITUC raising similar matters, the Committee requests the Government to send its observations on the ITUC's new allegations.**

*Article 3 of the Convention. Occupation of premises in the event of a strike.* The Committee noted previously that, according to 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. The Committee pointed out in this connection that any restrictions on strike pickets and workplace occupation are acceptable only where the action ceases to be peaceful. The Committee points out that it is nonetheless necessary in all cases to ensure observance of the freedom of non-strikers to work and the right of management to enter the premises. The Committee notes that in its report the Government again states that section 386 of the Labour Code seeks to prevent any lapses arising out of a strike, such as failure to respect the freedom of non-strikers to work. **The Committee requests the Government to amend section 386 of the Labour Code so as to abolish the ban on the occupation of workplaces or their immediate surroundings in the event of a strike and to ensure that any restrictions are allowed only in the instances recalled above.**

*Requisitioning of public employees.* In its previous comments the Committee pointed out the need to amend 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 observed that it would be advisable to confine the authority to requisition public employees to cases in which the right to strike may be limited or even prohibited, namely: (a) where these employees exercise authority in the name of the State; (b) in essential services in the strict sense of the term; and (c) in situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to meet the requirements of the situation. **Noting the Government's statement that measures are envisaged to revise Act No. 45-60/AN of 25 July 1960, the Committee requests the Government to ensure that, in the course of the revision the requisitioning of public employees will be possible only in the instances recalled above. It requests the Government to supply information on relevant developments in the legislation.**

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: 1962)

The Committee notes the Government's reply to the observations dated 4 August 2011 from the International Trade Union Confederation (ITUC) and to the Committee's request concerning the sending of statistics on collective bargaining in the private sector.

*Articles 4 and 6 of the Convention. Collective bargaining in the public sector.* With reference to its previous comments, the Committee notes the Government's indication in its report that pursuant to Act No. 013/98/AN of 28 April 1998 establishing the legal regime applicable to posts and employees in the public service, as amended by Act No. 019-2005/AN of 18 May 2005, public servants are entitled to freely engage in bargaining and to conclude agreements in their sectors of activity but that in practice no collective agreement has been negotiated or concluded in the public sector. The Committee notes that the Act in question does not explicitly recognize the right to collective bargaining for public servants not engaged in the administration of the State but that sections 44 and 45 of the Act state that public service employees enjoy the rights and public freedoms secured to all Burkinabé citizens by the Constitution, that they can, inter alia, establish associations or occupational trade unions, become members thereof and hold office therein, under the conditions stipulated by the legislation relating to the right of association, and that the right to strike is secured to public service employees who exercise it within the framework defined by the relevant legislative texts in force. ***The Committee therefore requests the Government to take the necessary steps to ensure that the legislation explicitly guarantees the right to collective bargaining for public servants not engaged in the administration of the State and to provide information in its next report on any further developments in this regard and on any collective agreement concluded in this sector.***

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

## **Burundi**

### **Right of Association (Agriculture) Convention, 1921 (No. 11)** (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 recalls that for many years now its comments have referred to the need to amend Legislative Decree No. 1/90 of 25 August 1967 on rural associations which provides that, in the event of public subsidy, the Minister of Agriculture may establish rural associations (section 1), membership of which is compulsory (section 3) and that he determines their statutes (section 4). It also provides that the obligations of agricultural workers who are members of these associations include the provision of services for the common enterprise, the payment of a single or regular contribution, the provision of agricultural or livestock products and the observance of rules respecting cultural discipline and other matters (section 7), under penalty of the seizure of the member's property (section 10).

The Committee had noted the Government's indication that the Decree in question has not yet been repealed, but that its repeal will take place in the near future. ***The Committee strongly hopes that the Government will finally take effective measures to amend or repeal Legislative Decree No. 1/90 of 25 August 1967, and requests the Government to provide information in this respect in its next report.***

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

### **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 in 2008 by the Trade Union Confederation of Burundi (COSYBU) and in 2009 and 2010 by the International Trade Union Confederation (ITUC), particularly the allegations regarding death threats to trade union officials and an assault on the Chairman of the Trade Union of Medical Doctors of Burundi (SYMABU) and other acts of intimidation of trade unionists.***

*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 provisions 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.***

***Lastly, the Committee notes the comments of 4 August 2011 by the ITUC on the application of the Convention and requests the Government to provide its observations thereon.***

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.***

The Committee notes with *concern* the comments made by the ITUC in its communication dated 31 July 2012 concerning the increase in acts of violence in the country, including death threats and intimidation against trade unionists in the education and health sectors. The Committee also notes the comments made by COSYBU dated 31 August 2012 concerning serious deficits in social dialogue, the withdrawal of the check-off facility, the abusive detention of a trade unionist and obstacles to the trade union's right to conduct its activities. ***The Committee requests the Government to provide its observations in relation to the comments made by the ITUC and COSYBU.***

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

### ***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 Government's response to the concerns expressed by the International Trade Union Confederation (ITUC) in 2011, over the increased use of fixed duration contracts which could undermine the enjoyment of freedom of association and collective bargaining rights. The Government indicates that this longstanding issue has been the subject of tripartite consultations on the basis of draft amendments to the legislation, which had been prepared by the Ministry of Labour and Vocational Training, but that no consensus was reached. It adds that the issue would be the subject of further consultations in the tripartite Labour Advisory Committee in the near future.

The Committee notes with *regret* that the Government fails to respond to other comments submitted by the ITUC, by the Cambodian Labour Confederation (CLC) and by Education International (EI) in 2011, as well as to the 2010 comments by the ITUC and the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), which referred in particular to serious acts of violence and harassment against trade union leaders and members. Moreover, the Committee notes with *concern* the new comments submitted by the ITUC, in a communication dated 31 July 2012, and by EI and the Cambodian Independent Teachers' Association (CITA), in a communication dated 31 August 2012, which refer again to serious acts of violence and harassment against trade union leaders and members. *The Committee urges the Government to send its observations on all the issues raised in 2010, 2011 and 2012, by the ITUC, the CLC, EI and CITA, and the FTUWKC.*

The Committee notes the latest conclusions and recommendations of the Committee on Freedom of Association in Case No. 2318, concerning the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy and the continuing repression of unionists, which had to be examined in the absence of a response from the Government, and was considered as an extremely serious and urgent case (365th Report, November 2012, paragraphs 286–290). In its previous comments concerning these murders, the Committee had noted that: (1) the convictions of Sok Sam Oeun and Born Samnang for the murder of Chea Vichea had been remanded to the Appeal Court by the Supreme Court, and they had been released on bail; (2) an investigation was being conducted, before the case of the murder of Chea Vichea would be referred to the Appeal Court for reprocessing; (3) the Supreme Court had ordered on 2 March 2011 the provisional release on bail of Thach Saveth who had been convicted for the murder of Ros Sovannareth and had been awaiting a review of his conviction for several years; and (4) the case of the murder of Hy Vuthy had been sent to the prosecutor of Phnom Penh Municipal Court on 2 September 2010 for processing. In the case of the murder of Chea Vichea, the Appeals Court had announced that there was insufficient evidence to charge the two persons who had served jail sentences, indicated that the charges against them should be dropped and referred the case for further investigation. The Committee had expressed the firm hope that this would allow full and independent investigations into the murders of the abovementioned Cambodian trade union leaders to be conducted so as to bring to justice the actual murderers and perpetrators of these heinous crimes as well as the instigators. Furthermore, in view of the above and the total absence of due process in relation to the trials of Sok Sam Oeun, Born Samnang and Thach Saveth, the Committee had requested the Government to provide information

on any steps taken to compensate them for damages. The Committee notes the Government's indication in its report that the Ministry of Labour and Vocational Training sent a letter to the Ministry of Justice, and that information would be provided upon receipt of the latter's response. ***The Committee urges the Government to provide the information previously requested in relation to the compensation to be granted to Sok Sam Oeun, Born Samnang and Thach Saveth.***

***Trade union rights and civil liberties.*** In its previous observations, the Committee urged 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 as well as that of their families. The Committee notes with ***regret*** that the Government remains silent on these matters in its report, particularly when the comments made by a number of workers' organizations allege serious acts of violence and harassment against trade union leaders and members, and the discussion on Cambodia in the Conference Committee on the Application of Standards in June 2011 relates to the persistent climate of violence and intimidation towards union members. The Committee is bound to recall, 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. It 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 as well as that of their families, in accordance with the abovementioned principles. The Committee requests the Government to provide information in this regard.***

***Independence of the judiciary.*** In its previous observations, 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 recalls that in 2011 the Conference Committee on the Application of Standards urged the Government to: (1) adopt without delay the proposed law on the status of judges and prosecutors and the law on the organization and functioning of the courts and ensure their full implementation; (2) provide information on the progress made in this regard, as well as in respect of the creation of labour courts; and (3) transmit the draft texts to the Committee of Experts so that it would be in a position to comment as to their conformity with the Convention. The Committee notes that none of these texts have been received. ***It once again requests the Government to indicate whether these laws have been adopted, and, if so, to provide a copy of these laws. If this is not the case, the Committee urges the Government to adopt them without delay.***

***The Committee further requests the Government to provide in its next report information on any progress made concerning the creation of labour courts.***

***Furthermore, in relation to the Government's previous indication that an anti-corruption law had been adopted together with a five-year strategic plan (2011–15) and that an anti-corruption unit (ACU) had been established, the Committee notes from the Government's statement before the ILO Governing Body at its 316th Session that the ACU was established as a part of its commitment to legal and judicial reform in combating impunity, and requests the Government provide information on the composition and mandate of the anti-corruption institution and on its activities, together with a copy of the law, the strategic plan and any other relevant document.***

***The draft Trade Union Act.*** In its previous observation, the Committee noted that the ITUC, the CLC and EI, in their 2011 comments, expressed concerns over a number of provisions of the draft Trade Union Act, in particular in relation to the scope of application of the law, the requirements for a local union to be registered, the possibility for the Ministry of Labour to suspend the registration of a union, the qualifications imposed for trade union leadership, and the sanctions on trade union leaders and members for the commission of unfair labour practices. The Committee had also noted that the Government had benefited from the Office's assistance on the draft law. The Committee recalls that in 2011 the Conference Committee on the Application of Standards urged the Government to: (1) intensify its efforts, in full consultation with the social partners and with the assistance of the ILO, to ensure that the final draft legislation on trade unions would be fully in conformity with the Convention; and (2) transmit the draft text to the Committee of Experts so that it would be in a position to comment as to its conformity with the Convention. The Committee notes the information provided by the Government in its report that many consultations have been conducted on the draft which has been finalized in August 2011 and was sent to the Council of Ministers for review. The Government adds that it hopes that the relevant institutions to which it would be sent afterwards would then review the draft to improve it. The Committee notes that no copy of the final draft legislation on trade unions has been received. ***It once again requests the Government to provide information on the steps taken towards the adoption of the Trade Union Act, and expresses the firm hope that the social partners will be fully consulted throughout the process, and that the final draft legislation will take into account all its comments and in particular that civil servants, teachers, air and maritime transport workers, judges and domestic workers will be fully guaranteed the rights enshrined in the Convention.***

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

## Canada

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

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee also notes the comments of the International Trade Union Confederation (ITUC), dated 31 July 2012, the Canadian Labour Congress (CLC), dated 27 August 2012, and the Confederation of National Trade Unions (CNTU), dated 31 August 2012, which relate to all the issues under examination. The Committee also notes the allegations of the ITUC and the CLC that there are increasing numbers of violations of trade union rights in Canada, and in particular that there is much evidence that violations of freedom of association have become the norm for the Federal Government. They also denounce the slowness of provincial authorities in giving effect to the recommendations of the Committee in relation to freedom of association, even though the Canadian Constitution entrusts them with primary responsibility in relation to labour legislation. ***The Committee requests the Government to provide its observations in reply to the allegations of the ITUC, the CLC and the CNTU.***

*Article 2 of the Convention. Right to organize of certain categories of workers.* The Committee recalls that for many years it has been expressing concern at the exclusion of broad categories of workers from the statutory protection of freedom of association.

*Workers in agriculture and horticulture (Alberta and Ontario).* The Committee noted in its previous comments that workers in agriculture and horticulture in the Provinces of Alberta and Ontario are excluded from the coverage of the general labour relations legislation and are thereby deprived of the same statutory protection of the right to organize afforded to other workers. The Government referred to the ruling of the Supreme Court of Canada of 29 April 2011 in the case *Ontario (Attorney General) v. Fraser*, in which the constitutionality of Ontario's Agricultural Employees Protection Act, 2002 (AEPA), was challenged on the basis that it infringed the rights of farm workers under subsection 2(d) of the Canadian Charter of Rights and Freedoms. The ruling found that the AEPA provides a meaningful process for agricultural workers in Ontario to bargain collectively, and therefore upheld the AEPA as constitutional.

The Committee recalls that in its previous comments it emphasized that, although the AEPA recognizes the right of agricultural employees to form or join an employees' association, it however maintains the exclusion of this category of workers from the scope of the Labour Relations Act. The Committee notes the indication in the Government's report that the Ontario Government still considers that the AEPA provides adequate protection to this category of workers, particularly to form associations, represent their interests and exercise their constitutionally protected rights. The Ontario Government indicates: (1) that if properly interpreted, the Act requires agricultural employers to consider workers' representations, issues and concerns in good faith; and (2) that it does not intend to amend the legislation.

The Committee also recalls that it noted previously that the Government of Alberta did not envisage reviewing its legislation following the decision of the Supreme Court concerning Ontario's AEPA. Noting the absence of information in this regard in the Government's report, the Committee understands that the position of the Government of Alberta has not changed on this point. Noting the comments of the ITUC and the CLC, which denounce the status quo on this matter, the Committee is bound to recall once again that all workers without distinction whatsoever (with the sole possible exception of the armed forces and the police) shall have the right to organize under the Convention. Therefore, the Committee considers that any provincial legislation that would deny or limit the full application of the Convention in relation to the freedom of association of agricultural workers should be amended. ***The Committee consequently once again requests the Government to ensure that the Governments of Alberta and Ontario amend their legislation so as to fully guarantee the right of agricultural workers to organize freely and to benefit from the necessary protection to ensure observance of the Convention. The Committee also once again requests the Government to provide detailed information and statistics on the number of workers represented by trade unions in the agricultural sector in Ontario and, where appropriate, on the number of complaints lodged to assert the exercise of their rights under the Convention and on any related follow-up action taken.***

*Domestic workers, architects, dentists, land surveyors, lawyers and doctors (Ontario, Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).* The Committee recalls that its previous comments related to the need to ensure that a number of categories of workers excluded from any statutory protection of freedom of association under the labour relations legislation (domestic workers, architects, dentists, land surveyors, lawyers, engineers and doctors) enjoy the protection necessary, either through a revision of the labour relations legislation or by means of specific regulations, to establish and join organizations of their own choosing.

With regard to the situation of domestic workers, the Committee notes the indication by the Government of New Brunswick that it is continuing consultations with stakeholders regarding potential amendments to the Industrial Relations Act to remove the exclusion of domestic workers. The Committee also notes that the Government of Prince Edward Island indicates that domestic workers are covered under the Labour Act. The Committee notes that the Government's report



does not contain any information with regard to the Governments of Ontario or Alberta on whether any amendment to the legislation is envisaged to remove the exclusion of domestic workers from the scope of industrial relations legislation.

With regard to the other categories, including architects, dentists, land surveyors, lawyers, doctors and engineers, the Committee notes the indication by the Government of New Brunswick that the Industrial Relations Act does not contain exclusions for architects, dentists, land surveyors, lawyers, doctors or engineers. The Committee notes the indication by the Government of Prince Edward Island that architects, engineers, lawyers and doctors who are entitled to practice and who are employed in a professional capacity are excluded from the Labour Act, but that their interests are represented by their associations. With regard to Saskatchewan, the Committee notes the indication by the Government of the Province that in May 2012 it began a comprehensive review of its labour legislation, including the labour relations legislation. The objective of the review is to modernize and simplify the legislation, including a possible revision of the definition of the terms “employer” and “employee”, which will help to identify more accurately the relations between employees and employers within the meaning of the definitions.

***Taking duly into account the information provided, the Committee requests the Government to ensure that the Governments of Alberta, Nova Scotia, Ontario and Prince Edward Island take the necessary measures to guarantee that architects, dentists, land surveyors, lawyers, doctors and engineers enjoy the right to establish and join organizations of their own choosing, in accordance with the principles of the Convention. The Committee also requests the Government to indicate in its next report the outcome of the examination undertaken by the Government of the Province Saskatchewan on its labour legislation and its impact in terms of determining the categories of workers which can establish organizations of their own choosing under the terms of the Trade Union Act.***

***The Committee also trusts that the Government’s next report will include information on the tangible measures adopted or envisaged by the Governments of Ontario and Alberta to amend their legislation in relation to the exclusion of domestic workers from the scope of their labour relations legislation. The Committee hopes that the Government will also report progress in the revision of the Industrial Relations Act of the Province of New Brunswick with a view to removing the exclusion of domestic workers.***

*Nurse practitioners (Alberta).* In its previous comments, the Committee noted that, under the terms of the Labour Relations (Regional Health Authorities Restructuring) Amendment Act of the Province of Alberta, nurse practitioners do not have the right to establish and join organizations of their choosing. ***Noting that the Government’s report does not contain any information on this subject, the Committee urges the Government to ensure that the Government of Alberta takes the necessary measures to amend the above Act so that nurse practitioners have the right to establish and join organizations of their own choosing, in accordance with the principles of Article 2 of the Convention.***

*Principals and vice-principals in educational establishments and community workers (Ontario).* The Committee recalls its previous comments concerning the need to ensure that principals and vice-principals in educational establishments, as well as community workers, have the right to organize, pursuant to the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos 1951 and 1975. The Committee notes that the Government’s report does not contain any information on this point. ***The Committee trusts that the Government’s next report will contain information on the progress achieved in law and practice by the Government of Ontario in ensuring that principals and vice-principals in educational establishments, and community workers, enjoy the fundamental right to establish and join organizations of their own choosing for the defence of their professional interests.***

*Part-time employees of public colleges (Ontario).* In its previous comments, the Committee noted the entry into force of the amended Colleges Collective Bargaining Act (CCBA), which gives part-time academic staff and support staff in the colleges of Ontario the full right to organize and to bargain collectively. The Committee also noted that the same Act establishes a procedure to change, establish or eliminate bargaining units, including the possibility for colleges to challenge the number of union members holding cards, which the colleges allegedly use widely to delay the certification process. In this respect, the Ontario Public Service Employees’ Union had filed certification applications to represent both part-time academic staff and part-time support staff units. In both cases, representation votes had been held and the ballot boxes had been sealed pending a decision by the Ontario Labour Relations Board (OLRB) concerning the issues that remained at dispute between the parties.

The Committee notes the Government’s indication that, on 27 March 2012, the OLRB noted that the parties had reached agreement on the outstanding challenges in respect of one college (Centennial College), and that the parties had asked the OLRB to confirm the agreement and to determine a timeline as to how to move forward to deal with the challenges in relation to other colleges. The process and timeline for moving forward are reported to have been agreed. The Government of Ontario emphasizes the importance of the adjudicative role played by the OLRB in the process of certification established by law and considers that it would be inappropriate to interfere with or influence the procedure. It adds that this position is shared by the National Union of Public and General Employees. ***Noting the positive developments in the treatment of this matter, the Committee requests the Government to indicate any further developments in this regard.***

*Education workers (Alberta).* The Committee recalls that its previous comments concerned the need to amend the provisions of the Post-Secondary Learning Act which empower the board of a public post-secondary institution to

designate categories of employees who are allowed, by law, as academic staff members, to establish and join a professional association for the defence of their interests. **Noting that the Government's report does not contain any information on this point, the Committee once again requests it to ensure that the Government of Alberta takes all the necessary measures to ensure that all higher education staff without exception have the right to organize.**

*Article 2. Trade union monopoly established by law (Prince Edward Island, Nova Scotia and Ontario).* The Committee recalls that its previous comments concerned the specific reference to the trade union recognized as the bargaining agent in the law of Nova Scotia (the Teaching Professions Act), Ontario (the Education and Teaching Professions Act) and Prince Edward Island (the Civil Service Act, 1983). **Noting that the Government's report does not contain any information on this matter, the Committee once again requests the Government to ensure that the Governments of Nova Scotia, Ontario and Prince Edward Island take all necessary measures to bring their legislation into full conformity with the standards of freedom of choice on which the Convention is based by removing any specific designation of individual trade unions as bargaining agents and replacing it with a neutral reference to the most representative organization.**

*Article 3. Right of employers' and workers' organizations to organize their activities and to formulate their programmes. Education sector.* The Committee's previous comments concerned the recurrent problems in the exercise of the right to strike by workers in the education sector in several provinces (British Columbia and Manitoba). The Committee also notes the allegations of the CLC dated 31 August 2012 that the Government of Ontario announced that it would introduce a bill against education workers and school boards that would block any possible strike for up to two years and end all negotiations, particularly on teachers' wages. **The Committee requests the Government to provide its observations in reply to these allegations.**

*British Columbia.* The Committee previously requested information on any decision by the Labour Relations Board of British Columbia with regard to essential service levels in the education sector. The Committee notes the interim order issued on 28 February 2012 by the Labour Relations Board on an application by the British Columbia Teachers Federation (BCTF), which found as follows: (1) the British Columbia Public School Employers' Association (BCPSA) and the BCTF will work with the Board to designate essential service levels for the BCTF bargaining unit; (2) the interim order will be reviewed on a weekly basis commencing at the beginning of the week of 12 March 2012, and may be varied, modified or amended as the circumstances require and the Board finds to be appropriate; and (3) any issue relating to the application or interpretation of the interim order will be raised as soon as possible and will be dealt with by the Board as expeditiously as possible.

With regard to the discussions between the Government of the Province and the BCTF concerning the Public Education, Flexibility and Choice Act, the Committee notes the Government's indication that these discussions were held between May and November 2011, and that the Government subsequently introduced the Education Improvement Act (Bill No. 22) in February 2012, which was adopted in March 2012. The Committee notes all of this information.

*Manitoba.* The Committee recalls that its previous comments concerned the need to amend section 110(1) of the Public School Act, which prohibits teachers from engaging in strike action. The Committee notes once again that the Government does not envisage amending the Public School Act. The Government adds that teachers in the Province voluntarily gave up the right to strike in 1956 in exchange for binding arbitration, and that neither teachers nor school boards have formally petitioned the Manitoba Government to restore the right to strike to teachers. The Act currently provides for a process of arbitration in resolving collective bargaining disputes. **Recalling that the right to strike should not be restricted for teachers, the Committee requests the Government to ensure that the Government of Manitoba takes the necessary measures to amend the Public School Act accordingly.**

*Certain categories of employees in the health sector (Alberta).* The Committee's previous comments concerned the prohibition of strikes for all employees within the regional health authorities, including various categories of labourers and even gardeners governed by the Labour Relations (Regional Health Authorities Restructuring) Amendment Act. **The Committee notes that the Government's report does not contain any information on this subject and requests it to ensure that the Government of Alberta takes the necessary measures to ensure that all workers in the health sector who are not providing essential services in the strict sense of the term are guaranteed the right to strike.**

*Public sector (Quebec).* The Committee recalls that its previous comments concerned Act No. 43, which put a unilateral end to negotiations in the public sector by imposing the application of collective agreements for a determined period, thereby depriving the workers concerned, including teachers, of the right to strike (the labour law in Quebec prohibits strikes during the term of a collective agreement). The Committee also requested the Government to amend the following provisions: (1) section 30, which establishes severe and disproportionate sanctions in the event of infringements of the provisions prohibiting recourse to strike action (suspension of the deduction of trade union dues merely by the employer declaring that there has been an infringement of the Act for a period of 12 weeks, for each day or part of a day that the infringement is observed); (2) section 32, which provides for a reduction of employees' salaries by an amount equal to the salary that they would have received for any period during which they are in infringement of the Act, in addition to not being paid during that period; and (3) section 38, which prohibits the facilitation of class actions against an association of employees by reducing the conditions required by the Code of Civil Procedure for such an action; and (4) sections 39 and 40, which establish severe penal sanctions.

The Committee notes the Government's indication that the Act is still subject of litigation before the courts of the Province and that the Government of Quebec therefore reserves its comments until the courts have issued their decisions. ***The Committee requests the Government to provide full particulars on the decisions of the provincial courts, and the action taken as a result, and hopes that the amendments will be made as requested.***

*Arbitration imposed at the request of one party after 60 days of work stoppage (section 87.1(1) of the Labour Relations Act) (Manitoba).* The Committee recalls that its previous comments concerned the need to amend section 87.1(1) of the Labour Relations Act, which allows a party to a collective dispute to make a unilateral application to the Labour Board so as to initiate the dispute settlement process when a work stoppage has exceeded 60 days. The Committee notes the Government's indication that no changes are anticipated in the Labour Relations Act. ***The Committee once again requests the Government to ensure that the Government of the Province of Manitoba takes the necessary measures to amend the above Act so that an arbitration award may only be imposed in cases involving essential services in the strict sense of the term, public servants exercising authority in the name of the State or where both parties to the collective dispute so agree.***

*Compliance of the Public Service Essential Services Act and of the Act to amend the Trade Union Act of the Province of Saskatchewan.* The Committee recalls that its previous comments concerned the Public Service Essential Services Act (Bill No. 5) and the Act to amend the Trade Union Act (Bill No. 6), which were adopted by the Government of Saskatchewan in May 2008. The Committee also observed that these texts were the subject of a complaint before the Committee on Freedom of Association (CFA) (Case No. 2654), and it referred to the March 2010 conclusions and recommendations of the CFA, which drew the attention of the Committee to the legislative aspects of the case. The Committee recalls that, in accordance with the recommendations of the CFA, the provincial authorities are called upon, in consultation with the social partners; (1) to amend the Public Service Essential Services Act (Bill No. 5) so as to ensure that the Labour Relations Board may examine all aspects relating to the determination of an essential service and act rapidly in the event of a challenge arising in the midst of a broader labour dispute; (2) to amend the Public Service Essential Services Act, which sets out a list of prescribed essential services; (3) to make compensatory guarantees available to workers whose right to strike may be restricted or prohibited under the Public Service Essential Services Act; and (4) to amend the Trade Union Act (Bill No. 6), so as to lower the requirement, set at 45 per cent, for the minimum number of employees required to express support for a trade union in order to begin the process of a certification election.

The Committee noted previously that a number of national and provincial trade unions had filed a complaint with the provincial court in July 2008 to have Bills Nos 5 and 6 declared unconstitutional for violating, among other fundamental texts, the Canadian Charter of Rights and Freedoms and the international Conventions ratified by Canada. The Committee notes the Government's indication that the Court of Queen's Bench for Saskatchewan rendered a decision on 6 February 2012 on the bills. With regard to Bill No. 6, the court found that the amendments were constitutional and, consequently, the Government of Saskatchewan has no intention of changing the amendments made to the Act in 2008. With regard to Bill No. 5, the court found that the amendments were unconstitutional and that the legislation as written infringes upon freedom of association by limiting the right to strike. The Committee notes the indication that the Government of Saskatchewan is appealing the decision of the court and therefore notes that the matter is once again before the courts. ***The Committee refers to the conclusions of the CFA regarding the need to amend the Trade Union Act, as amended by Bill No. 6, and requests the Government to provide information on any decision taken by the competent jurisdiction concerning the appeal made by the Government of Saskatchewan against the finding that the Public Service Essential Services Act (Bill No. 5) is unconstitutional, and any action taken as a result, taking into account the recommendations of the CFA concerning the amendments to be made to that Act.***

## Chad

### ***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 noted in its previous comments that, under section 294(3) of the Labour Code, parents or guardians may oppose the right to organize of young persons under 16 years of age. The Committee recalls once again that *Article 2 of the Convention* guarantees all workers, without distinction whatsoever, the right to establish and join organizations. ***The Committee once again expresses the firm hope that section 294(3) of the Labour Code will soon be amended to guarantee the right to organize to minors who have reached the legal minimum age (14 years) for access to the labour market, either as workers or apprentices, without parental or guardian authorization being necessary. The Committee urges the Government to provide information in its next report on all the measures adopted in this regard.***

*Article 3. Right of workers' and employers' organizations to organize their administration and activities in full freedom.* The Committee has also noted on many occasions that, under section 307 of the Labour Code, the accounts and supporting documents relating to the financial transactions of trade unions must be submitted without delay to the labour inspector, when so requested. Recalling once again that the inspection by the public authorities of trade union finances should not go beyond the obligation of organizations to submit periodic reports, the Committee trusts that the Government will take the necessary measures to amend section 307 of the Labour Code taking into account the abovementioned principle. ***The Committee also once again***

**requests the Government to provide a copy of the instructions issued by the Director of Labour and Social Security with regard to the inspection of the financial transactions of trade unions.**

With regard to Act No. 008/PR/07 of 9 May 2007 regulating the right to strike in public services, the Committee notes that section 19 gives a broad definition of essential services and includes radio and television broadcasting services and abattoirs. The Committee points out that the principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. 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: the Committee therefore considers 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 of 1994 on freedom of association and collective bargaining, paragraph 159).

Furthermore, the Committee reiterates its comments on the following provisions of the Act:

- Section 11(3) of the Act, which imposes the obligation to declare the “possible” duration of a strike. The Committee recalls that, under section 13(1), non-compliance with this condition would result in a strike being declared illegal. **Recalling that trade unions should be able to call strikes of unlimited duration and considering that the legislation should be amended to this effect, the Committee requests the Government to indicate the measures adopted for this purpose.**
- Sections 20 and 21, under which the public authorities (the Minister concerned) have the discretion to determine the minimum services and the number of officials and employees who will ensure that they are maintained in the event of a strike in the essential services enumerated in section 19. In this respect, the Committee recalls once again that such a service should nevertheless meet at least two requirements: (1) firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, that is one which is limited to the operations that 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; and (2) as 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. 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, paragraphs 160 and 161). **The Committee therefore once again requests the Government to amend the legislation to ensure that the minimum service is limited to the operations that are strictly necessary to avoid jeopardizing the life or normal living conditions of all or part of the population, that the workers’ organizations concerned are able to participate in defining such a service, along with the employers and the public authorities, and to indicate any progress achieved in this respect.**
- Section 22(1) of the Act, which provides that any refusal by officials or employees to comply with requisition orders (sections 20 and 21) makes them liable to the penalties provided for in sections 100 and 101 of Act No. 017/PR/2001 issuing the general public service regulations. In this regard, the Committee recalls that these legislative provisions describe the degrees of disciplinary penalties to be imposed by order of gravity, but without indicating those which correspond to the different degrees of fault. **The Committee once again requests the Government to clarify the scope of penalties for contraventions of legal provisions and also requests it to indicate any other penalties that can be imposed for violations of Act No. 008/PR/2007 regulating the exercise of the right to strike in public services.**

The Committee notes the International Trade Union Confederation’s (ITUC) comments of 4 August 2011 addressing legislative issues already raised by the Committee. **The Committee notes with regret that the Government has not sent any response to the comments of 2009 and requests it to do so.**

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

**The Committee also requests the Government to provide its observations in relation to the comments made by the ITUC dated 31 July 2012, concerning the violent repression by the law enforcement authorities of a demonstration in the petroleum sector.**

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 4 August 2011, reporting obstacles to collective bargaining in the oil sector. **The Committee requests the Government to provide its observations thereon. The Committee reiterates its previous observations concerning the effective inclusion of the Union of Trade Unions of Chad (UST) in social dialogue and requests the Government to provide any information on any measures adopted in this respect.**

**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 ITUC dated 31 July 2012 reporting again obstacles to collective bargaining in the oil sector and to social dialogue in general.

## Colombia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1976)**

*Comments from workers' and employers' organizations.* The Committee notes the comments of the World Federation of Trade Unions (WFTU), dated 11 and 27 June 2012, the International Trade Union Confederation (ITUC), the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), provided in communications dated 31 August 2012, and of the General Confederation of Labour (CGT), dated 5 September 2012. The Committee notes that these comments refer in general to matters already under examination by the Committee, and in particular to acts of violence against trade union leaders and members, including murders and other acts of violence, as well as the impunity relating to many acts of violence. The Committee also observes that some of the comments refer to allegations of anti-union discrimination and matters relating to difficulties in exercising trade union rights by workers in the informal economy or who are covered by subcontracting arrangements. ***The Committee invites the Government and the social partners to include these subjects in their discussions in the context of the National Dialogue Commission on Wage Policies, or in corresponding dialogue bodies.***

The Committee also notes the comments of the National Employers Association of Colombia (ANDI), supported by the International Organisation of Employers (IOE), dated 5 September 2012. The Committee notes the comments made by the IOE on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee notes the Government's various communications related to these comments.

#### **Cooperation project on international labour standards**

The Committee notes with *interest* the launching, in August 2012, of the project to promote compliance with international labour standards in Colombia, financed by the Government of the United States. The Committee observes that the objectives of the project are: (1) the strengthening of the institutional capacity of the Ministry of Labour, and particularly labour inspection services; (2) the strengthening of existing social dialogue bodies (the Standing Dialogue Commission on Wage and Labour Policies and the Special Committee for the Handling of Conflicts referred to the ILO-CETCOIT) and of the social partners who participate in them, particularly at the departmental and local levels; and (3) the strengthening of the institutional capacity of the Government of Colombia to improve measures for the protection of trade union leaders, members, activists and organizers and to combat the impunity of those engaging in acts of violence against them. The Committee also notes that the project envisages providing the necessary technical assistance as a priority to the units of the new Ministry of Labour responsible for combating the abuse of employment mediation and other forms of contracting which are in violation of workers' rights (such as associated work cooperatives, simplified limited liability companies and temporary service enterprises) and to guarantee that collective accords are not used to undermine the position of trade unions or to prevent the conclusion of collective agreements.

*Technical assistance missions.* The Committee notes that the Government requested assistance from the Office to strengthen the work that has been undertaken by the CETCOIT. In this context, the Committee welcomes the participation by the Office in the meetings of the CETCOIT in May and August 2012, in the context of which the parties reached agreements and withdrew certain complaints that had been submitted to the Committee on Freedom of Association. The Committee of Experts notes the comment by the CUT in relation to the CETCOIT that there are no regional structures and that it does not have means of protecting trade union organizations that do not have their headquarters in Bogotá, that the results achieved in recent years have been very disappointing and that in certain cases the agreements concluded are not given effect. In this respect, the Committee takes note of the Government's indication that: (1) tripartite agreement was reached on the appointment of a facilitator in the CETCOIT and that since the facilitator's appointment 15 cases have been dealt with, in eight of which agreement was reached; (2) the members of the CETCOIT have discussed the ILO's recommendation to establish departmental structures, for which reason it has been agreed to establish pilot projects in certain areas of the country; and (3) the regulations of the CETCOIT were approved, with certain adjustments for greater clarity concerning the actors and members. The Committee also notes the Government's indication that in Case No. 2356 (examined by the CETCOIT), in which the Committee on Freedom of Association recommended the reinstatement of 51 workers on the grounds of the causal relationship between their trade union activities and their dismissal, the Constitutional Court accepted the recommendations of the Committee on Freedom of Association, ordered the reinstatement of the workers and that the Court's ruling has already been given effect. The Committee notes all of these initiatives and information, taking into account that the project for the promotion of compliance with international labour standards in Colombia, referred to above, envisages the strengthening of the machinery intended to resolve labour disputes, and particularly the CETCOIT, as recommended by the ILO high-level tripartite mission which visited Colombia in 2011, and it hopes that it will be able to continue noting progress in the work of the CETCOIT.

The Committee further notes that, at the invitation of the Government, the Director of the International Labour Standards Department of the ILO visited Colombia to seek information on the effect given to the conclusions of the high-level tripartite mission which visited Colombia in 2011, and the Tripartite Agreement on Freedom of Association and Democracy concluded in 2006. The Committee notes in particular that the Director of the Department was provided with

information on: (1) the structure and objectives of the new Ministry of Labour, which entered into operation in December 2011; (2) the legislative and practical measures adopted to combat the violence affecting the trade union movement and impunity (the creation of the Protection Unit; the adoption of Decree No. 4912 of 26 December 2011 reforming the nature and operation of the Committee to Assess Risks and Recommend Measures; the protection of 1,273 members of trade union organizations; the budget of US\$107 million for protection; and the increase in criminal investigation officers, specialized prosecutors and courts); and (3) the measures adopted to strengthen labour inspection (launching of a training, prevention and monitoring programme for enterprises, cooperatives, third-party employers and officials on collective rights on the right of association; the increase in the number of inspectors, with 100 new posts in 2011 and the plan for there to be 904 inspectors by 2014; the inspection services have imposed penalties in the ports, palm and transport sectors for labour mediation and violations of labour standards). The Committee notes with *interest* that, during the visit by the Director of the ILO Standards Department, the Public Prosecutor of the Nation and the ILO signed a Memorandum of Understanding envisaging the establishment of relations of cooperation and information. The Committee further notes that, according to the information provided to the Director of the ILO Standards Department, the social partners have a different view on the progress that is reported to have occurred; moreover, during her visit, various workers' organizations referred to violations of trade union rights and collective bargaining and, at a meeting of the Standing Dialogue Commission, it was agreed that the complaints concerned would be subject to tripartite review with the aim of them being examined at the national level.

***The Committee requests the Government to continue to provide information on developments with respect to the strengthening of the labour inspection in law and in practice and the examination of conflicts by the CETCOIT.***

#### ***Trade union rights and civil and political liberties***

The Committee recalls that for many years it has been examining allegations of violence against trade unionists and the situation of impunity, which have been submitted to the Committee of Freedom of Association in Cases Nos 1787 and 2761. The Committee notes with *concern* that the ITUC, CUT, CTC and CGT refer to acts of violence against trade unionists. They allege that, according to the records of the National Trade Union School, 30 trade unionists were murdered in 2011, and 11 in 2012, and that the number of threats increased from 404 in 2010 to 538 in 2011. The CUT indicates that the exercise of the right to freedom of association continues to involve a high level of risk, that there is no public protection policy focused on trade union liberties guaranteeing the right and integrity of the persons concerned and the free functioning of trade union organizations, and that in relation to impunity it is possible to see a first change in the views of certain courts and prosecutors (in relation to the need to adopt a systematic method of investigation in relation to anti-union violence, and to go deeper into the trade union aspects in investigations so that the motives are clearly revealed) and that up to now it has also been possible to discern a commitment in the instructions of the sub-unit of the Office of the Public Prosecutor, without it yet having an impact on the work of prosecutors and the courts.

The Committee further notes the indications by the ANDI that: (1) the Government adopted Decision No. 716 in April 2011 extending trade union protection not only to trade union leaders and members, but also to trade union activists and to workers who were not able to establish a union because they had received threats; (2) Directive No. 013 of April 2011 appointed 153 officers of the criminal police to combat impunity in crimes affecting the trade union membership, and Decree No. 2248 of June 2011 allocated 60 new specialized prosecutors, reaching a total of 162 prosecutors at the national level; (3) in 2012, a budget of US\$113.33 million were allocated to the trade union leader protection programme; and (4) the Office of the Public Prosecutor has continued the work of investigation in the context of Cases Nos 1787 and 2761, submitted to the Committee on Freedom of Association, and by April 2012 the numbers were 425 convictions and 530 persons convicted for crimes against trade unionists.

The Committee notes the Government's indication that: (1) it is firmly convinced that as those responsible for crimes committed against trade unionists are investigated and punished, not only are the rights to truth and justice being guaranteed, but a contribution is being made to the prevention of further violations, and that the Government has the absolute commitment and will to combat impunity; (2) in 2010, the number of murders committed in Colombia was 14,459, of which 37 were trade unionists; in 2011, the number of murders was 14,746, of which 30 were trade unionists, and in 2012, the number of trade unionists murdered was 12; (3) in 2011, the number of trade unionists benefiting from protection measures was 1,186, with a budget of US\$70 million, while in 2012 the number of trade unionists benefiting from protection was 1,273, with a budget of US\$107 million; (4) in compliance with the commitments made, the Protection Unit was created by Decree No. 4065 of 2011 and Decree No. 4912 of 26 December 2011 was issued organizing the Prevention and Protection Programme for the Right to Life, Freedom, Integrity and the Security of Individuals, Groups and Communities under the responsibility of the Ministry of the Interior and the National Protection Unit; (5) the Decree referred to above reformed the nature and operation of the Committee for the Assessment of Risks and the Recommendation of Measures (CERREM) and the Technical Unit for the Compilation and Analysis of Information was created; (6) the representatives of the CUT, CTC and CGT trade union confederations participate in the CERREM with standing invitations; (7) with a view to combating impunity, the Office of the Prosecutor of the Nation has adopted a new criminal investigation policy for violations of human rights and has created the interdisciplinary National Analysis and Situation Unit which will allow progress to be made, among other cases, in those related to macro-criminal structures which violate the human rights of trade unionists, following standards adopted by international courts; (8) the new strategy of the Office of the Public Prosecutor emphasizes the need to give priority to investigations (according to the

information provided to the Director of the ILO Standards Department, priority has been given to all cases of the murder of trade unionists included in Case No. 2761) of violations of human rights as an effective response in combating impunity; this policy was discussed with the social partners; (9) the Public Prosecutor has indicated that joint and tripartite machinery will be established with the Ministry of Labour, the trade union confederations and the ANDI, through monthly meetings which will address concerns and comments relating to the management of investigations in cases of anti-union violence, and the first meeting was held on 31 August 2012; (10) the measures adopted will increase the outstanding results achieved up to now, which led in Case No. 1787 to 439 sentences being imposed in relation to the murders, with a total of 531 persons being convicted, while in Case No. 2761 there have been 13 sentences imposed in relation to the murders, and 11 cases are currently before the courts; (11) in relation to impunity, the Office of the Public Prosecutor conducted a study on the sentences handed down for acts of violence against unionized workers and found that in only 17.7 per cent of the cases was there a relation between trade union status or the exercise of trade union activities and the murder, and that the most frequent motive related to the collaboration or membership of the victim in a subversive group; (12) in view of the commitment of the Office of the Public Prosecutor to continue strengthening investigations and prosecutions of all cases of violence against members of trade union organizations and the importance for the management of the Office of the Public Prosecutor of adopting international standards of investigation so as to combat impunity more effectively, a Memorandum of Understanding was concluded between the Office of the Public Prosecutor of the Nation and the ILO (referred to above); and (13) taking into account the absolute commitment of the State to defend workers' rights, the Office of the Public Prosecutor of the Nation has undertaken an institutional campaign in the media defending the right of association, and has participated in social forums and agreements.

The Committee notes with *deep concern*, with reference to the violence affecting the trade union movement, the murder of 12 trade unionists in 2012. The Committee appreciates the involvement of all the social actors and the authorities in combating violence in general, and particularly violence affecting the trade union movement. In this respect, the Committee welcomes the initiative of the Office of the Public Prosecutor to meet the tripartite actors frequently to address their concerns and comments concerning the management of investigations in cases of anti-union violence (the Committee recalls that the trade union movement has been calling for this initiative for some time). ***The Committee hopes that the new measures adopted by the authorities will make it possible to provide protection to trade union leaders and members who are under threat, eradicate violence against trade union leaders and members and convict those guilty of such acts. The Committee requests the Government to continue to provide information on the effects of these measures in practice.***

### **Pending legislative issues**

*Articles 3 and 6 of the Convention. Right of workers' organizations to organize their activities and to formulate their programmes.* The Committee recalls that for a number of year it has been referring to the need to take measures to amend the legislation in relation to:

- the prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very broad range of services that are not necessarily essential (section 430(b), (d), (f), (g) and (h); section 450(1)(a) of the Labour Code; Tax Act No. 633/00 and Decrees Nos 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967). The Committee notes the indication by the ANDI that: (1) section 430(g) of the Substantive Labour Code, which provided that the mining, preparation and distribution of salt was an essential service found to be void by the Constitutional Court and therefore no longer forms part of Colombian legislation; and (2) in general, in relation to essential services, it is important to bear in mind that this is one of the points set out in the plan of action with the Government of the United States and the Tripartite Agreement on Freedom of Association and Democracy of 2011, and that the technical support of the Office is envisaged for their discussion and determination by the social partners in the National Dialogue Commission on Labour and Wage Policies. In this respect, the Committee notes that the Constitutional Court informed the Director of the ILO Standards Department that it had urged the legislative authorities to specify the services which have to be considered essential and that Congress still has to determine this matter;
- the possibility to dismiss workers who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), even where the unlawful nature of the strike is a result of requirements that are contrary to the principles of freedom of association. The Committee notes the indication by the ANDI that the Constitutional Court ruled that greater guarantees are to be provided to workers who participate in an unlawful strike and that the Court found that merely declaring a work stoppage illegal is not sufficient to immediately dismiss the worker, as the employer has to demonstrate the latter's participation in the collective and illegal work stoppage through a procedure in which the employee can intervene with a view to safeguarding his or her rights to due process and defence; and
- the prohibition of the calling of strikes by federations and confederations (section 417(i) of the Labour Code).

In this respect, the Committee notes the reference by the Government to the launching of the technical cooperation project for compliance with international labour standards, in the context of which dialogue bodies will be reinforced, and particularly the National Dialogue Commission, in which matters related to essential public services will be examined. The Committee trusts that the Government will soon undertake a tripartite analysis of the above legislative provisions and

that it will take into account in this respect the rulings of the Supreme Court and Constitutional Court, and reminds it that it may have recourse to the technical assistance of the Office in this process. ***The Committee requests the Government to provide information in its next report on any measures adopted in this respect.***

## Comoros

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(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 of the Convention. Anti-union discrimination.* The Committee noted that the Workers' Confederation of Comoros (CTC) reports numerous dismissals of trade union members and leaders in the para-public and port sectors in a communication dated 31 August 2011. ***The Committee requests the Government to provide its observations in this respect.***

*Article 4. Right of collective bargaining.* The Committee notes with regret that the Government's report has not been received. For several years, the Committee has been requesting the Government to take measures to promote collective bargaining in the public and private sectors. The Committee had previously noted the Government's expression of regret that there had not been substantial progress in this respect and its reiterated desire to receive technical assistance to help the partners concerned gain a better understanding of the socio-economic importance of collective bargaining. The Committee had noted in this respect the comments made by the Employers' Organization of Comoros (OPACO), according to which collective agreements in the pharmaceutical and bakeries sectors, which had been under negotiation for several years, had still not been concluded and that negotiations in the press sector were currently under way. The Committee had noted with regret that, according to OPACO, the Government had not taken any measures to promote collective bargaining in either the public or the private sectors.

***The Committee once again regrets the absence of progress in the collective bargaining that is being undertaken and expressed the firm hope that the negotiations will be completed in the near future.*** The Committee noted that, according to the CTC, there has still not been progress in collective bargaining and that it is not structured and has no framework at any level. ***The Committee once again expresses the firm hope that ILO technical assistance will be provided in the very near future and it requests the Government to take all the necessary measures to promote collective bargaining in both the private and the public sectors. The Committee requests the Government to provide information in this respect.***

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

## Costa Rica

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1960)***

*Comments from employers' and workers' organizations.* The Committee notes the comments on the application of the Convention made by the World Federation of Trade Unions (WFTU), the National Federation of Employees of the Social Security System and Fund (UNDECA) (23 July 2012), the International Trade Union Confederation (ITUC) (31 July 2012), according to which it is almost impossible to establish and operate a trade union in the private sector, and the Confederation of Workers Rerum Novarum (CTRN) (30 August 2012), underlining the relevance of the Committee's comments. The Committee also notes the comments of the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) (12 April 2012), referring to matters already under examination by the Committee. The Committee notes that the information provided by the Government in its report covers a large part of the problems raised in the above comments. Finally, the Committee notes the Government's reply to the comments of the CTRN, dated 31 August 2011.

*ILO missions and pending issues.* The Committee recalls that a high-level mission visited the country in 2006, as well as a technical assistance mission in May 2011. These missions emphasized four problematic issues that are still pending and which are examined below.

I. *Slowness and ineffectiveness of proceedings regarding sanctions and compensation in the event of anti-union acts.* The Committee notes that, according to the ITUC and the CTRN, delays in judicial proceedings exceed six years and that cases relating to unfair labour practices and violations of labour and social rights may take up to eight years before they are concluded.

The Committee noted previously that, according to the high-level mission which visited the country in 2006, the proceedings in cases of anti-union discrimination are so slow that it takes at least four years to obtain a final ruling. The Committee also noted the conclusions of the ILO technical assistance mission in 2011 on this issue:

With regard to the issue of the slowness and ineffectiveness of proceedings relating to anti-union discrimination and interference, the mission draws the attention of the Committee of Experts to the significant Bill to reform labour procedures (which is intended to speed up labour procedures, including those relating to acts of anti-union discrimination or interference, and in practice establishes a special expeditious procedure for matters relating to trade union rights). The Bill is being promoted by the Government, trade union confederations and the UCCAEP, and is under examination in the Legislative Assembly, where it is favoured by the majority of the groups, according to the understanding gained by the mission from its meetings with the heads of groups and the Legal Affairs Commission of the Legislative Assembly. If the Bill is finally adopted, it could give effect to the comments of the Committee of Experts on the need for expeditious and efficient justice and effective procedures to punish acts of



anti-union discrimination or interference. Certain authorities and trade union confederations agree that there was a fear of dismissal when wishing to establish or join a union, for which reason the Bill is of the greatest importance. The Bill also deals with other matters relating to the application of Convention No. 87. The mission draws the attention of the Committee of Experts to other measures referred to by the Government and the judicial authorities to combat delays in judicial proceedings.

The Committee notes the Government's indications as follows: (1) the legislative process concerning the bill to reform labour procedures (legislative file No. 15990), and the agreements reached up to now have not been easy; (2) the bill is being given priority with a view to defending workers' rights; (3) it was difficult to adapt the bill during the extraordinary sessions (December 2010 to April 2011), as the four sessions were devoted to hearing comments and the divergences between various streams of political thought and the different visions held in the plenary of the Assembly; (4) the judicial authorities made significant efforts during the period 2009–10 with a view to complying with the constitutional principle of prompt and full justice, thereby guaranteeing an efficient service for users; the Government refers to the creation of a new court, measures for the computerization of files, the restructuring of judicial offices and of the distribution of the workload, and measures to give effect to the principle of oral hearings; (5) the strengthening of labour institutions, both in the judicial system and in the Ministry of Labour and Social Security, have been priority areas that go beyond the current legislative framework, through which it is planned to reduce the duration of procedures to punish cases of anti-union acts, in accordance with the national tradition of democracy and safeguards in relation to the protection of labour rights; and (6) Directive No. 08, of 9 May 2011, includes a procedure for "cases for the re-establishment of protection" intended for unfair practices that remove freedom of association.

The Committee notes the Government's additional indications that: (1) in May 2012, in the context of a special session of the Higher Labour Council, a tripartite dialogue and consultation body, a bipartite agreement was reached between employers and workers who called on the deputies to approve the text of Bill No. 15990, except in relation to the matters on which agreement has not been reached; (2) a passive approach is currently being adopted to the other bills relating to the matters under the Convention to which the ILO supervisory bodies refer (including Bill No. 13475), as Bill No. 15990 is broad and inclusive and takes their content into account; (3) it is clear that Bill No. 15990 is a vital tool for dealing with labour disputes effectively; (4) recently, as part of the efforts that have been made to reduce delays in judicial proceedings, the court in plenary issued the protocol on oral hearings in labour proceedings, the principal objective of which is to guarantee a just, expeditious and economic outcome to any cases heard through oral proceedings; (5) experience shows that in judicial offices in which oral hearings have been used, the period between the lodging of the complaint and the decision was reduced from 300 to 190 days, and sentencing, which previously occurred 45 days after the presentation of the evidence, is now done immediately; and (6) significant progress has also been made in terms of the inefficiency of labour and conciliation procedures which have contributed to improving the efficiency of complaint procedures lodged with the administration.

The Committee notes the confirmation by the UCCAEP of this tendency and its indication that it is continuing to promote the Bill to reform labour procedures, and hopes that it will be adopted in the near future. According to the UCCAEP: (1) the judicial authorities have been working to improve judicial procedures with a view to reducing delays, for example through the implementation of computerized proceedings in labour jurisdictions which facilitate the processing of files and the certification of the quality of proceedings in labour jurisdictions; and (2) the efforts made by courts of law to deal with these matters have resulted in cases of this type being decided in less than two years after passing through all the judicial procedures, which is an achievement in this respect.

The Committee however notes that Bill No. 15590 to reform labour procedures was approved by the Legislative Assembly in September 2012, but vetoed by the executive authorities in October 2012 on the grounds that two of the matters covered were unconstitutional (the regulation of strikes in essential services and the prohibition upon recruiting temporary staff to replace striking workers).

The Committee emphasizes the contradiction between the information provided by the Government and the indications of the trade union organizations on the duration of labour proceedings in cases of the violation of trade union rights. In any event, the Committee notes the information provided by the ILO mission that judicial proceedings last for four years. The Committee also notes the Government's indication that in practice the number of complaints relating to anti-union practices is low (11 cases) and that the unionization rate is 9.6 per cent.

***Noting the efforts made to resolve the problem of the slowness of procedures in cases of anti-union discrimination, the Committee hopes that the discrepancies that persist and which were preventing the Government from approving Bill No. 15990 to reform labour procedures will be resolved in the near future. The Committee expresses the firm hope that the parties in the Legislative Assembly will reach an agreement on the divergences and it requests the Government to provide information on any developments in this respect. The Committee also requests the Government to provide information on developments in the legislative procedure concerning Bill No. 13475 whose consideration, according to the Government, remains passive at the moment.***

II. *Submission of collective bargaining to criteria of proportionality and rationality (in accordance with the case law of the Constitutional Chamber of the Supreme Court of Justice, which found unconstitutional a significant number of clauses in collective agreements in the public sector at the instigation of the public authorities (the Citizens' Ombudsperson, the Office of the General Prosecutor of the Republic) or one or other political party).* The Committee noted previously the emphasis placed by the trade union organizations on the gravity of the problem of collective

bargaining in the public sector and the requirements imposed by the Negotiating Policies Commission on public employees, and that the CTRN and the other confederations in the country considered that the long delay in the adoption of the Bills to amend the legislation and for the ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154) (which resulted from a tripartite agreement), show the lack of interest in moving forward.

The Committee also referred to the report of the 2011 ILO mission, which in its conclusions indicated as follows:

With regard to the judicial removal of clauses of collective agreements through legal actions for unconstitutionality, in which the irrationality or lack of proportionality of certain clauses is invoked, the mission wishes to indicate that the new Attorney-General and the new Citizens' Ombudsperson have a good understanding of ILO principles and that legal actions for unconstitutionality have not been initiated, which is very positive. The statistics provided by the Government appear to indicate that the scope of the problem has diminished in recent years. More specifically, the Government provided statistics (for the period 2008–11) on the rulings on the legal actions challenging the constitutionality of certain clauses in collective agreements. Of 17 rulings, only two found that the challenges had merit, with a total of three clauses being removed. According to the Government, the number of legal challenges currently before the courts is five.

The mission adds that in the Constitutional Chamber of the Supreme Court three of the seven magistrates align themselves with the ILO principles indicated by the Committee of Experts, and it is believed that the other magistrates have a better understanding of the meaning of the comments of the Committee of Experts. It is therefore necessary for the Committee of Experts to continue following developments on this matter, particularly taking into account the fact that in the past one political party filed certain of these legal actions for unconstitutionality.

The mission also welcomes the training provided for members of the three State authorities and the social partners, to which the Government refers, and in particular appreciates the forthcoming workshop on collective bargaining.

The mission recalls that, although there may be cases of serious breaches of constitutional rights in certain clauses of agreements, it is normal and customary for collective agreements to contain provisions that favour trade union members, particularly because many of these agreements are concluded in the framework of a collective dispute in which both parties frequently make concessions, and nothing prevents non-members from becoming members of one or other trade union if they wish to obtain more favourable treatment. In any case, collective bargaining as an instrument of social peace cannot be submitted to recurrent scrutiny of its constitutionality without losing its prestige and enormous value. In other words, it is necessary to endeavour to prevent the abuse of legal actions for unconstitutionality.

The Committee notes the Government's indications that: (1) the scope of the problem has tended to diminish in recent years; (2) of the five pending challenges to find clauses unconstitutional that are before the Constitutional Chamber, which were noted by mission, two have been decided through rulings Nos 2012-01279 and 04942-2012; (3) one of the rulings found the challenge to be without merit as the Constitutional Chamber cannot review or evaluate the content of collective agreements, which govern labour relations in accordance with the fundamental rights of organization and bargaining, and in view of the legal force with which they are endowed by the Constitution in section 62; in addition, it found that such agreements are valid for a certain period and can be revised, although through the due legally established procedures.

***The Committee hopes that the three challenges to find clauses unconstitutional that are awaiting decision by the Constitutional Chamber will be finalized in the near future in accordance with the principles of Convention No. 98 and requests the Government to provide information on any developments in the situation, including any further challenges lodged against clauses of collective agreements. The Committee requests the Government to use all the means at its disposal to make progress with the draft legislation, with tripartite support, with a view to reinforcing the right to collective bargaining in the public sector, including the draft texts for the ratification of Conventions Nos 151 and 154.***

III. *Operation of the Commission on Collective Bargaining Policies in the Public Sector.* The Committee noted previously the allegations by the national trade union confederations that the Commission on Collective Bargaining Policies was having a very negative effect on collective bargaining in the public sector. The report of the 2011 ILO mission indicated as follows:

The Deputy Minister of Finance indicated that the role of the Commission on Collective Bargaining Policies in the Public Sector does not relate to matters of substance, but to criteria of a fiscal nature so that public expenditure is not increased in an irrational manner. The trade unions engage in negotiations and consultations each year with the central Government for the negotiation of wages. Sometimes, they are increased above the inflation rate. Normally they are around the past inflation rate, but now the claim is to calculate the increase based on future inflation forecasts.

The Commission on Collective Bargaining Policies in the Public Sector does not challenge clauses of collective agreements that do not have a budgetary impact, and authorizes clauses with a budgetary impact, although in practice wage rises and clauses which breach the legislation have not been permitted (for example, if the recommendations in relation to dismissals by a joint commission envisaged in a collective agreement are binding for the management of the institution concerned). Wage negotiations are held throughout the public sector with the participation of trade union representatives and are undertaken within the framework of the projected level of future state budgets or of the decentralized institution concerned.

The Committee notes the Government's indication that in April 2012 a report was submitted to the President of the Commission on Collective Bargaining Policies in the Public Sector with a view to notifying the members of the Commission of the report prepared by the ILO technical assistance mission which took place in 2011, so that its report could be examined. The Government adds that the criticisms of the trade unions noted by the Committee of Experts concern matters which arose years ago, and that nevertheless in recent years the Commission on Collective Bargaining Policies has endeavoured to discharge the functions set out in Decree No. 29576-MTSS, for which reason these situations have now been superseded and there are no challenges pending currently. During the course of 2011, the Commission on

Collective Bargaining Policies in the Public Sector had before it various submissions concerning draft texts, complaints and additions to collective agreements.

The Committee recalls that, with reference to the complaints made by trade union confederations concerning the unsatisfactory operation of the Commission on Collective Bargaining Policies (its slowness, its de facto role as an employer, supervision of the content of clauses with budgetary implications), the 2011 ILO mission indicated that the Government had accepted the mission's proposal that the Higher Labour Council (a tripartite body) should hold meetings with the Commission on Collective Bargaining Policies with a view to evaluating the system and adopting reforms. ***The Committee requests the Government to provide information on this subject and trusts that evaluation meetings will be held and will address the problems relating to the operation in practice of the Commission on Collective Bargaining Policies.***

IV. *Direct agreements with non-unionized workers.* In its previous comments, the Committee noted that in 2007 there were 74 direct agreements in force, whereas only 13 collective agreements remained.

The Committee referred to the conclusions of the ILO mission of May 2011 on this matter, which read as follows:

With regard to the problem of direct agreements with non-unionized workers, the Committee of Experts had noted in its observation the enormous imbalance between their numbers and those of collective agreements in the private sector (there cannot be direct agreements in the public sector). The mission highly appreciated the transparency and openness of the UCCAEP (employers) and the Minister of Labour to discuss this matter with trade unions in the context of the Higher Labour Council (a tripartite body), including the report drawn up in 2007 by an ILO expert.

The mission emphasized that the proportion of direct agreements concluded by standing committees of non-unionized workers had grown worse in relation to the number of collective agreements.

The Minister of Labour accepted the proposal made by the mission to carry out activities, in collaboration with the ILO Subregional Office, to promote collective bargaining with trade unions in both the public and private sectors, including training activities. The mission recalled that Convention No. 98 establishes the principle of the promotion of collective agreements with trade union organizations and that such collective agreements have constitutional rank in Costa Rica.

The mission wishes to note that, at the end of its session, there were before the Legislative Assembly draft amendments of differing content during the examination of the Bill to reform labour procedures: some sought to abolish direct agreements, and others to promote them, others to make them possible in the public sector and others to leave the regulations as they are at present. The mission wishes to point out that the problems raised by the Committee of Experts may be either aggravated or overcome depending on the final decision taken by the Legislative Assembly.

According to the data provided by the Government, there are 298 active unions (with 195,950 members and 1,195 trade union leaders) and six confederations. The unionization rate is 10.3 per cent (8.3 per cent in 2007). The number of members in the public sector is 123,568 and in the private sector 72,382. Seven cases of anti-union persecution were reported in 2010.

With regard to collective agreements, according to the Government, in May 2011 there were 70 collective agreements covering 50,600 workers in the public sector. In the private sector, there are 15 collective agreements in force concluded by trade union organizations and 159 direct agreements concluded by standing committees of (non-unionized) workers. The mission emphasizes that the Government has not yet provided data on the coverage (number of workers covered) of collective agreements and direct agreements in the private sector. The trade union confederations allege that the Government is pursuing in practice a policy of promoting direct agreements with non-unionized workers. The Government asserts that it is the workers who choose between the forms of association that exist in the country, although in the view of the mission the situation is not so clear. Based on all of its meetings, and particularly those with various authorities and certain magistrates of the Supreme Court, it is clear that the expansion of direct agreements is being promoted in the country.

The Committee notes the UCCAEP's indication that direct agreements had their origins as a form of dialogue and in the need for workers to organize, in accordance with the protection afforded by the Workers' Representatives Convention, 1971 (No. 135). This does not prevent those workers who so wish from organizing themselves in unions with the protection of the Constitution and international Conventions. Both legal formulae, which have their basis in both international and national law, can coexist with validity as they both allow dialogue between the parties. Nor should it be forgotten that, where unions exist, they prevail over standing workers' committees. Direct agreements are nothing other than negotiations with enterprise committees which are envisaged in many other legislations and which occur when workers decide to organize in the form of standing committees. Trade unions may still conclude collective agreements when they consider it appropriate, and one type of agreement is not prejudicial to the other. There are no international standards prohibiting non-unionized workers from engaging in bargaining and dialogue with their employers, which is even endorsed by the ILO. The UCCAEP indicates that the high-level mission was able to note the existence of such workers' representatives, as an independent organization, seeking dialogue and the improvement of the conditions of workers, and that they cannot be disregarded as a reality recognized by the law, and that the members of the mission called for them to be better regulated based on objective criteria. This recommendation is also contained in the draft Code of Labour Procedure, which was ultimately opposed by trade union representatives.

The Committee notes the Government's indications that: (1) the three authorities of the Republic share a focus on action to consolidate social dialogue between the social partners concerned and the promotion of the right to collective bargaining in the private sector; (2) activities are being undertaken to promote the right to collective bargaining (four new training workshops were held in June and July 2012); (3) in September 2011, in the case of the enterprise ANFO and the trade union SITRAPECORI, based on an appeal for the protection of constitutional rights (*amparo*) by the union, the Constitutional Chamber found that in a situation of the coexistence of a standing committee of workers and a trade union in the same enterprise, the right to collective bargaining lies essentially with the unions, which prevail over any other type of labour organization in collective bargaining; this ruling by the Constitutional Chamber safeguards the rights of unions

and offers the clarification that standing workers' committees are specific bodies for the resolution of economic and social collective disputes, in the following terms: "... they are not envisaged by the ordinary law as permanent bodies to represent the economic and social interests of workers, but merely as a means of resolving specific or circumstantial economic and social disputes (ruling No. 12457-2011); (4) in light of the legal concepts referred to above, the coexistence in the enterprise of a standing workers' committee and a trade union does not give rise to exclusivity in their representative roles and they are complementary within a democratic system of labour relations; (5) the legal purpose of standing workers' committees is to represent workers solely under the circumstances indicated above, on the understanding that their functions do not include activities that are recognized as the exclusive prerogatives of trade unions; (6) it may be considered that direct agreements are another alternative for promoting collective bargaining as a means of achieving peaceful and agreed solutions to disputes between employers and workers; (7) the fact that those who negotiate these agreements are not members of unions is a direct consequence of one of the two possible dimensions of the right to organize, which also implies that membership is not compulsory; and (8) with regard to the disproportionate numbers of collective agreements and direct agreements, the Ministry of Labour and Social Security continues to focus on direct agreements not being used as an alternative to replace the conclusion of collective agreements, based on an understanding of the legal nature and scope of each of these labour instruments.

The Committee notes the Government's further indication that the Constitutional Chamber does not deny the possibility of the existence in the industrial relations system of a dual model of representation, consisting of trade union organizations active at the enterprise level and freely elected workers' representatives. As a consequence, it is clear that the questions raised by the ILO supervisory bodies concerning direct agreements are not addressed directly at these agreements, but rather at the establishment by workers of standing committees to resolve disputes with employers through direct agreements. For this reason, and irrespective of the final text which emerges from the agreements between the social partners concerning the Bill to reform labour procedure, the Ministry of Labour and Social Security has opted to undertake an examination and to hold consultations with a view to issuing regulations respecting the process of the election of workers' representatives as members of standing committees when they lead to a direct agreement, thereby preventing such agreements from being used for anti-union purposes. Furthermore, the National Directorate of Inspection issued circular No. 018-12 of 2 May 2012 to all inspection officials indicating that, in the case of the existence of a trade union and a standing workers' committee, the inspector shall ensure that there are no violations of freedom of association and, in the event of any dispute or difference requiring negotiation or conciliation, it is to be referred to the Directorate of Labour Affairs for confirmation of the applicable procedure.

The Government adds that the Institutional Commission for External Training (CICE) is now in operation within the Ministry of Labour and Social Security. The CICE is composed of various directorates and its principal function is the planning and implementation of training activities. This training is intended to promote workers' rights in accordance with the terms indicated by the mission which visited the country in 2011. The project to promote the fundamental rights of workers (PRODEF), executed by the REAL CARD Foundation, is providing support to develop the structure of the plan of action of the CICE.

The Committee notes with *interest* the ruling by the Constitutional Chamber of the Supreme Court of Justice (No. 12457-2011) which clearly gives priority to collective agreements (which are recognized in the Constitution) in relation to direct agreements with non-unionized workers.

The Committee notes the Government's indication that there are currently 93 collective agreements in the public sector (covering 57,877 workers), 16 in the private sector (covering 6,934 workers) and 125 direct agreements in the private sector (covering 29,761 workers). The Committee observes that, according to these statistics, the number of collective agreements in the private sector continues to be very low (13 in 2007, 15 in 2011 and 16 in 2012) and there is a very high number of direct agreements with non-unionized workers. ***The Committee points out that this is an anomalous situation and requests the Government to take measures to give effect to the criteria set out in ruling No. 12457-2011 and to intensify the promotion of collective bargaining within the meaning of Convention No. 98. The Committee hopes to be able to note tangible progress in its next report.***

## Croatia

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

*Article 3 of the Convention. Right of employers' and workers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities.* The Committee previously recalled that, since 1996, it had been commenting over the issue of the distribution of trade union assets and had been requesting the Government to determine the criteria for their division. In its previous observation, the Committee expressed the firm hope that, given that the representativeness criteria had already been defined, the Government would take the necessary measures in the very near future to address this issue.

The Committee notes that the Government indicates in its report that: (i) the new count of the unions' membership was completed as early as 2009; (ii) the required formal inter-union agreement on property division entered into by the unions' central bodies has still not been reached; and (iii) currently, the union property is to the largest extent being used

by the Union of Autonomous Trade Unions of Croatia (UATUC), a smaller portion of real estate belongs to the graphics industry, school and civil service trade unions, and the remaining central union bodies operate out of leased properties, except for the Croatian Association of Trade Unions to which the UATUC gave its premises. *In this respect, the Committee hopes that the parties concerned will reach an agreement on the distribution of trade union assets in the near future and requests the Government to provide in its next report any information thereon.*

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

## Cuba

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

The Committee notes the comments of 31 July 2012 by the International Trade Union Confederation (ITUC) and the comments of 30 August 2012 by the Independent Trade Union Coalition of Cuba (CSIC) – which the Government does not recognize as a union – referring to matters already raised by the Committee, and in particular pointing out that no legislative changes requested by the ILO supervisory bodies have been introduced. The Committee also notes the Government's reply to these comments dated 1 November 2012.

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated of 29 August 2012, which are dealt with in the General Report of the Committee.

#### *Trade union rights and civil liberties*

The Committee recalls that in its previous comments it had asked the Government to send copies of the court rulings connected with specific cases of convictions of workers belonging to the Independent National Confederation of Workers of Cuba (CONIC), persecution and threats of imprisonment against delegates of the Light Industry Workers' Union (SITIL), and the confiscation of equipment and humanitarian aid sent from abroad to the Single Council of Cuban Workers (CUTC). The Committee notes that the Government reiterates that none of the alleged trade unionists referred to in the Committee's observations were tried or convicted for the exercise or defence of trade union rights. They were all tried by courts in accordance with due process and sentenced for committing crimes to undermine the sovereignty of the State and other crimes clearly established under the law, and none of the penalized actions had anything to do with trade union activity whatsoever. *The Committee once again requests the Government to transmit a copy of the court rulings in question.* The Committee recalls that these actions had been examined by the Committee on Freedom of Association (Case No. 2258) and it refers to the conclusions reached in this context.

#### *Legislative issues*

The Committee recalls that the Government has been stating for many years that it is in the process of revising the Labour Code. The Committee notes that the Government's report does not provide any information whatsoever on the state of progress of this revision. *The Committee requests the Government to indicate in its next report whether the revision of the Labour Code is still ongoing or if it has been set aside.*

*Articles 2, 5 and 6 of the Convention. Trade union monopoly.* For many years, the Committee has been referring to the reference to the Confederation of Workers of Cuba (CTC) in sections 15 and 16 of the Labour Code of 1985. The Committee notes that in its report the Government states that: (1) workers may join trade union organizations, as laid down in *Article 2* of the Convention, without previous authorization of any kind, either State or enterprise; (2) there are more than 110,000 grass roots with levels of structure decided upon by the workers themselves, ranging from enterprise, sector or branch level to national bodies; (3) in the Cuban trade union movement, freedom is expressed in terms of unity, decided upon by the workers themselves, which is reaffirmed at the level of workers' congresses held regularly; the statutes and resolutions of the Cuban trade union organizations are adopted at these congresses with absolute freedom of expression and opinion; (4) Cuban workers pay trade union dues directly and voluntarily as there is no payroll check-off in Cuba; (5) the Labour Code contains the necessary guarantees for the full exercise of trade union activity in all workplaces throughout the country and for the full participation of workers and their representatives in the entire decision-making process concerning their varying interests; (6) there are no restrictions or bans whatsoever on workers exercising their trade union rights in any workplace, either in law or in the practice of labour relations in the country; (7) neither the Labour Code in force, nor the supplementary legislation, provide for restrictions on the establishment of trade unions, and all Cuban workers have the right to establish trade union organizations and are free to join them without prior authorization; and (8) there is no violation of the Convention in Cuba.

While noting this information, the Committee again stresses that trade union pluralism must remain possible in all cases and that the law must not institutionalize a national monopoly by referring to a specific trade union confederation; even in this situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish and join the organization of their own choosing. *In these circumstances, the Committee requests the Government once again to take measures to amend the above sections of the Labour Code and to provide information in its next report on any measures adopted in this respect.*

*Article 3.* In its previous comments, the Committee referred to the need to amend section 61 of Legislative Decree No. 67 of 1983 which confers on the CTC the monopoly to represent the workers on government bodies. The Committee notes that according to the Government: (1) this legislative decree was repealed by Legislative Decree No. 272 of 16 July 2010; (2) the only provisions of the legislative decree of 1983 that remain in force, until the corresponding legal standard has been adopted, are those referring to the establishment and organization of bodies of the State central administration and to technical advisory councils and other provisions that in no way affect compliance with the Convention; and (3) the new legislative decree makes no reference whatsoever to matters relating to freedom of association. **The Committee requests the Government to send a copy of Legislative Decree No. 272 of 16 July 2010.**

For years the Committee has referred to the absence of recognition of the right to strike in the legislation and the prohibition of its exercise in practice. The Committee notes the Government's statement that: (1) the legislation in force contains no prohibition whatsoever on the right to strike, nor does the criminal law establish any penalties for the exercise of such rights; (2) any decisions on this matter are the prerogative of the trade union organizations; should Cuban workers at some time decide to resort to a strike, there is nothing preventing them from doing so; (3) Cuban workers are the beneficiaries of participatory and democratic social dialogue at all decision-making levels, from enterprise-level up to the higher echelons of government; and (4) trade union representatives participate in all the processes of drafting labour and social security legislation and workers' assemblies in work units are frequently consulted on these drafts. **The Committee notes the information provided by the Government and recalls that in order to safeguard the legal certainty of workers who decide to have recourse to strike action, future legislative reform should contain provisions explicitly recognizing the right to strike.**

## Djibouti

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (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 notes with deep concern the comments made by the International Trade Union Confederation (ITUC) dated 4 and 31 August 2011 concerning the application of the Convention, in particular the allegations concerning the obstacles preventing the Labour Union of Djibouti (UDT) from developing its activities. The ITUC also denounces the fact that in October 2009 the preparatory work for the 4th UDT Congress was disrupted by the police who sent all the participants away and arrested several members of the UDT Executive, subjecting them to interrogation. Postponed to a later date, the UDT Congress was finally held quietly on 17–18 January 2010 at the actual headquarters of the UDT. The ITUC also recalls that the passport of the UDT Secretary-General has been confiscated since December 2010, which prevents him from fulfilling his commitments of representation at both regional and international levels; that the UDT has been broken into on numerous occasions; that its bank account has been frozen and then cancelled; and that its letter box is still confiscated. The ITUC points out moreover that interference in the organization of trade union activities not only affects the UDT in its capacity as a national confederation, but also many grass-roots trade unions, such as the dockers' union whose attempts to hold congresses have been violently repressed. Given that the Government has still not provided any observations on the comments made by the ITUC and in the light of their serious nature, the Committee draws the Government's attention once again 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. Furthermore, the Committee requests the Government once again to provide its observations on the comments made by the ITUC in August 2009 and August 2010 denouncing persistent actions of harassment and anti-union discrimination, as well as the violent repression of strikes.**

The Committee notes that most of the facts reported in the communications of the ITUC, dated August 2011, are the subject of a complaint being examined by the Committee on Freedom of Association (Case No. 2753).

*Legislative problems.* The Committee recalls that its previous comments concerned the provisions of Act No. 133/AN/05/5th L of 28 January 2006 issuing the Labour Code. This Act was denounced by the ITUC and also by the UDT and the General Union of Djibouti Workers (UGDT) as challenging fundamental rights relating to freedom of association. The Committee had noted that, according to the report of the direct contacts mission undertaken in January 2008, the Government had reaffirmed that all the social partners were consulted in the process of preparation of the Labour Code. However, the Committee notes 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 had noted that, in its report of May 2008, the Government had 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 notes 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 notes 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 union movement of Djibouti should be discarded from the work of the CNTEFP. The Committee further notes that, in its recent examination of a case concerning Djibouti, the Committee on Freedom of Association has noted the Government's indication that the CNTEFP has been constituted pursuant to Presidential Decree No. 2008-0023/PR/MESN and is chaired by the Minister of Employment, that its secretariat is provided by the Directorate of Labour and Relations with the social partners and that, in addition to its tripartite composition, the CNTEFP also includes a representation of the Parliament (Case No. 2450, 359th Report, paragraph 392). **The Committee urges the Government to provide detailed information concerning the current composition of the CNTEFP and its**

**functioning, in particular the manner in which it is consulted on legislative matters and matters affecting the interests of representative employers' and workers' organizations.**

With regard to its previous comments concerning points of divergence between the Labour Code and the Convention, the Committee has been informed of the adoption of Act No. 109/AN/10/6th L concerning the partial amendment of the provisions of sections 41, 214 and 215 of Act No. 133/AN/05/5th L of 28 January 2006 concerning the Labour Code. The Committee notes with *interest* that the relevant Act amends sections 41, 214 and 215 in line with the recommendations it has been making for many years. **The Committee trusts that the Government will rapidly take the necessary measures to revise and amend the other legislative provisions taking into account the comments reiterated hereafter:**

- *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.

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.**

The Committee notes the comments made by the ITUC dated 31 July 2012 concerning the application of the Convention and in particular the violent repression and the detention of dockers and railway workers during a demonstration. **The Committee requests the Government to provide its observations thereof.**

### **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:

*Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference.* 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 (UGDT) and the International Trade Union Confederation (ITUC), received between 2005–07, which denounced dismissals, acts of discrimination and anti-union interference in the postal and other sectors. In this respect, the Committee had requested the Government to order without delay an independent inquiry into the alleged acts. It had noted that in its report of 2008, the Government had indicated that the matter had been the subject of in-depth discussions with the direct contacts mission visiting Djibouti in 2008, which had encouraged all the parties to bring an end to the disputes. The Government had further stated that it would provide information on developments in the situation. The Committee had also noted the comments of the ITUC, dated 26 August 2009, indicating that the ILO Mission to Djibouti 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 denounced the pressure exerted on the Postal Union, which had had to establish a new executive committee. However, the management had interrupted the check-off of workers' trade union dues, thereby preventing the union from defending the rights of postal workers. The Committee notes with *regret* that the Government has not provided any information on the points raised for many years by the UDT, UGDT and ITUC. **The Committee once again urges the Government to provide its observations in reply to the comments on the situation in the postal and other sectors and to specify any cases in which penalties established by the law have been imposed following violations of the rights set out in the Convention.**

The Committee notes the comments of the ITUC, dated 31 August 2011, denouncing once again acts of anti-union discrimination and interference. The ITUC also denounces the fact that in October 2009, the preparatory work for the fourth UDT Congress was disrupted by the police who sent all the participants away and arrested a number of members of the UDT Executive, subjecting them to interrogation. Apart from these acts of interference, the ITUC also denounces the fact that the passport of the UDT Secretary-General has still not been returned after it was confiscated in December 2010, which prevents him from fulfilling his commitments of representation at regional and international levels; that the UDT headquarters has been broken into on numerous occasions; that its bank account was frozen and then cancelled; and that its letter box is still confiscated. The Committee notes that most of the facts reported in the ITUC's communication are contained in a complaint being examined by the Committee on Freedom of Association (Case No. 2753).

The Committee notes with concern that the trade union situation seems to be deteriorating and firmly recalls the obligation under the Convention to guarantee workers adequate protection against acts of anti-union discrimination (*Article 1* of the Convention) and to ensure adequate protection to workers' and employers' organizations against any acts of interference (*Article 2*). **The Committee requests the Government to provide its observations in reply to the communication from the ITUC, and to take measures to ensure the trade union rights of the UDT and its officials.**

*Article 4. Promotion of collective bargaining.* **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 other relevant information on its work.**

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

Finally, the Committee notes the ITUC's comments dated 31 July 2012 which are dealt with in the observation concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

## Dominican Republic

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1953)

The Committee notes the comments of the International Trade Union Confederation (ITUC), the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD), reiterating earlier comments on the lack of effective sanctions against acts of anti-union discrimination in various enterprises, restrictions on the freedom of association of public employees and the requirement that a union must represent an absolute majority of the workers in order to bargain collectively. The Committee notes the Government's reply to these comments.

*Lengthy proceedings in the event of violation of trade union rights.* The Committee requested the Government to send observations on the ITUC's assertion that court proceedings are excessively long (18 months or more) and that collective agreements have been negotiated in only four enterprises in the export processing zones. The Committee notes that in its report, the Government indicates that under the Labour Code, special labour courts have been set up that deal with cases simply and rapidly. The Committee also notes the Government's statement that according to a survey conducted in 2010 by the Judiciary and based on a sample of 723 cases that were settled between October 2009 and March 2010, 31 per cent of the cases were concluded in less than three months, 45 per cent took from three to six months, 17 per cent from six to nine months, 5 per cent from nine to 12 months and 2 per cent took more than a year; however, according to data supplied by the Legal Statistics Division, the average length of cases judged on the merits is 429 calendar days. The Committee points out that the existence of 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 on the fundamental Conventions concerning rights at work, 2012, paragraph 190). ***The Committee asks the Government to ensure that further measures are taken to secure rapid and effective protection against violations of trade union rights and to report on the impact of such measures on the length of proceedings to hear complaints of such violations.***

*Article 2 of the Convention. Insufficiently dissuasive sanctions against acts of anti-union discrimination.* The Committee asked the Government to indicate the specific penalties that may be imposed by law on persons found guilty of anti-union acts. The Committee notes that according to the Government; (1) under section 392 of Labour Code, the ordinary dismissal (without stated cause) of workers protected by trade union immunity shall be null and void; (2) where an enterprise terminates its employment relationship with a worker protected by trade union immunity in breach of the ban on termination without stated cause, the Labour Code establishes the following: (a) the termination shall be declared null and void; (b) the reinstatement of the worker shall be ordered; (c) the wages due from the date of termination to the date of reinstatement shall be paid; (d) a fine ranging from seven to 12 minimum monthly wages shall be imposed; (e) social security shall be paid; and (f) any incidental damages claimed by the worker shall be paid by order of the judge who imposed the penalties.

The Committee also notes that section 333 of the Labour Code prohibits employers from engaging in unfair or unethical labour practices, namely: (1) requiring workers or persons seeking work to refrain from joining or applying to join a union; (2) carry out reprisals against workers for engaging in trade union activities; (3) dismissing or suspending a worker for belonging to a trade union; (4) refusing, without due cause, to establish negotiations for the conclusion of collective agreements on conditions of work; (5) intervening, in any manner, in the establishment or administration of a union of workers or supporting it by financial or other means; (6) refusing to have dealings with the legitimate representatives of the workers; and (7) using force, violence, intimidation or threat, or any other form of coercion against workers or unions of workers, with a view to preventing or obstructing exercise of their rights as established by law. The Committee notes that section 720 classifies unfair practices that violate freedom of association as very serious offences punishable by fines ranging from seven to 12 minimum monthly wages (section 721(3)). ***The Committee requests the Government to provide information on the application of these penalties in practice, including statistical information, and on the dissuasive effects of the penalties (amount of the fines imposed and number of enterprises concerned).***

*Article 4. Requisite majorities for collective bargaining.* The Committee points out that for many years it has referred in its comments to the fact that, in order to engage in collective bargaining, a trade union must represent an absolute majority of the workers in an enterprise or a branch of activity (sections 109 and 110 of the Labour Code). The Committee observes in this connection that the Government repeats that tripartite discussions have been held in the Labour Advisory Council with a view to amending the legislation. The Committee further observes that the Government refers to an appendix containing a draft amendment to the Labour Code (the appendix was not received). The Committee recalls that in cases where the law provides that in order to be recognized as a bargaining agent, a trade union must obtain the support of 50 per cent of the members of a particular bargaining unit, problems may arise since a majority union that fails to secure this absolute majority is thus denied the possibility of bargaining. The Committee considers 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 on freedom of association and collective bargaining, 1994, paragraph 241). ***The Committee requests the Government to send the draft amendment to the Labour***



**Code and hopes that sections 109 and 110 will be amended in the very near future in order to bring them into conformity with the provisions requiring the promotion of collective bargaining.**

*Right to collective bargaining in practice.* In its previous comments the Committee asked the Government to take specific measures to promote collective bargaining and send statistical information on any collective agreements concluded in the public and private sectors, including in export processing zones, indicating the number of workers they cover.

The Committee notes from the Government's report that according to data supplied by the General Directorate of Labour, 15 collective agreements were concluded in 2011, covering 10,056 workers, including two agreements signed in export processing zones, covering 3,438 workers. The Committee also notes that between 2010 and 2012, 11 workshops were held on freedom of association and collective bargaining and a course was organized on collective bargaining. **The Committee requests the Government to continue to take measures to stimulate collective bargaining and develop it further, and to report on their effects in particular by continuing to provide statistics of the number of collective agreements signed and the number of workers covered.**

*Articles 2, 4 and 6.* As regards public servants not engaged in the administration of the State, in its previous comments, the Committee took note of the adoption of the Public Service Act, No. 41-08, and its implementing regulations (Decree No. 523-09). The Committee expressed the hope that the protection established in the new legislation on the public service would be extended to acts of anti-union discrimination at the time of hiring and in the course of employment, prohibiting discrimination based on union membership or participation in lawful union activities (the protection as it stands covers a union's founders and a number of its leaders, but not public officials or employees). The Committee again asked the Government to secure for associations specific protection from acts of interference by the employer such as interference in or control – financial or otherwise – of the associations' activities. Lastly, the Committee asked the Government to establish sufficiently dissuasive penalties against such acts of discrimination and interference.

The Committee notes in this connection that the Government again refers to the provisions of the Act and its implementing regulations but provides no specific information in reply to the Committee's requests. **In these circumstances, the Committee again asks the Government to take the necessary steps to secure for public servants not engaged in the administration of the State and their associations specific protection against acts of anti-union discrimination at the time of hiring and in the course of employment and against acts of interference by the employer such as interference in or control – financial or otherwise – of the associations' activities, and to establish sufficiently dissuasive penalties against such acts of anti-union discrimination and interference. The Committee requests the Government to provide information on these matters.**

*Articles 4 and 6. Right to collective bargaining of public servants.* With regard to the right to collective bargaining of public servants who are not engaged in the administration of the State, who, under the terms of *Article 6* of the Convention should enjoy the right to collective bargaining through their organizations, the Committee asked the Government to indicate whether under article 62 of the Constitution or under the legislation, associations of public servants now enjoy the right to collective bargaining. The Committee notes that, according to the Government, the Public Service Act, No. 41-08, and its implementing regulations (Decree No. 523-09) establish the right of public employees to form associations. **The Committee invites the Government, in consultation with the most representative employers' and workers' organizations, to take measures to secure recognition in law of the right to collective bargaining of public servants who are not engaged in the administration of the State.**

## Egypt

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

*Comments of workers' and employers' organizations.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee. The Committee notes the very detailed Government's observations on the comments submitted by the International Trade Union Confederation (ITUC) on 31 July and 31 August 2012. It notes in particular that, concerning the ITUC allegation that the state-controlled Egyptian Trade Union Federation (ETUF) continues to be the dominant trade union, the Government indicates that: (1) there are large numbers of trade union organizations in the country, some of which are under the ETUF, others are included in other federations, the most important of which is the Egyptian Federation of Independent Trade Unions; (2) the number of trade unions which were allowed to be established in all freedom exceeds 800 trade unions and federations; and (3) the Government does not control the ETUF and it is committed to handling trade union organizations and unions federations in full objectivity. Furthermore, with regard to the ITUC allegation that a court in the city of Helwan sentenced Kamal Abbas, the general coordinator of the Centre for Trade Union and Worker Services (CTUWS), to six months' imprisonment on 26 February 2012 because he denounced Ismail Ibrahim Fahmy, Acting President of the ETUF, while delivering a speech to the International Labour Conference (ILC) in 2011, the Government indicates that: (1) Ismail Fahmy initiated a lawsuit against Kamal Abbas for being insulted during the ILC and the court sentenced Mr Abbas in absentia to six months' imprisonment, according to the law; and (2) Mr Abbas appealed against the sentence, and appeared before the court,

which automatically dropped the sentence. Recalling the importance of freedom of expression in the full exercise of freedom of association, as set out in the 1970 resolution concerning Trade Union Rights and Their Relation to Civil Liberties, the Committee welcomes the information that the court has cancelled Mr Abbas' sentence. The Committee notes the Government's indication that it has not received any notifications on specific incidents of violence alleged by the ITUC and that it is committed to referring any violations or allegations with respect to the use of violence against strikes to a tripartite committee for its examination and the adoption of legal measures. ***The Committee once again requests the Government to submit the ITUC allegations to which it has replied to a tripartite committee for their examination and provide information in this respect.***

*Legislative issues.* The Committee recalls that for several years it has been commenting on 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 that it is paying attention to bringing the Trade Unions Act and the Labour Code into conformity with the provisions of the Convention and that all regulations are currently being prepared for their submission to the new Parliament. In particular, it indicates that in March 2011, it issued the "Freedom of Association Declaration" which reiterates the observance of all ratified international Conventions, including Convention No. 87, as well as the freedom of establishing trade union organizations. After the promulgation of this Declaration, a large number of new trade union organizations and several trade union federations, which group more than one general union, and/or trade union committee, were set up.

The Committee further notes the Government's indications with respect to the draft freedom of association law that: (1) the previous Parliament was annulled by virtue of a judicial decision rendered by the Constitutional Court in June 2012, which hindered the completion of the discussion or the promulgation of the draft law which had been passed by the Egyptian Cabinet on 2 November 2011; (2) societal dialogue process aimed at promulgating the freedom of association law is still ongoing (to this end, a high-level meeting was held in September 2012, which included the Minister of Manpower and Migration, the Secretary of State for Legal Affairs in addition to the former Ministers of Manpower (Dr Ahmed El Bor'ai and Mr Refaat Hassan), and the Director of the ILO in Cairo); (3) the Government is examining several options with respect to the substance of the law and with respect to the procedural alternatives which are available for its promulgation in the absence of Parliament, and the fact that the President is the person who assumes the legislative power temporarily, until the election of a new Parliament; and (4) it is expected that the draft law will be submitted to the Council of Ministers for its adoption and its referral to the President who is currently acting in a legislative capacity. This will be followed by holding new workers' elections based on the texts of the new law which will apply to trade union organizations in Egypt. Concerning the ITUC's allegations on the draft law, the Government indicates that it refutes the allegations that it is not in conformity with the provisions of Convention No. 87 as this is considered to be in anticipation of events, and an interference in Egypt's internal affairs. ***The Committee expects that the draft will have taken into account its previous comments, recalls that the Government may avail itself of the technical assistance of the Office in respect of all the matters raised above, and requests the Government to transmit the current draft so that it may consider its conformity with the Convention.***

Recalling its previous comments concerning the Decree of Law No. 34 (2011) adopted on 12 April 2011 by the President of the Supreme Council of Armed Forces which provided for sanctions, including of imprisonment, against any person who "during the prevalence of the state of emergency, makes a stand or undertakes an activity that results in the prevention of, obstruction, or hindering a State's institution or a public authority or a public or private working organization from performing its work" or who "incites, invites or promotes [such activity]", the Committee notes with ***satisfaction*** the Government's indication that as of 31 May 2012, the state of emergency has been lifted and that since this Decree stated clearly that it applied only during the prevalence of the state of emergency, it is no longer applicable.

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

## 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. It must therefore repeat its previous observation which read as follows:

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; (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.*

Finally, the Committee notes the comments of the International Trade Union Confederation (ITUC), dated 4 August 2011, on the application of the Convention and the persistent refusal to register various trade unions, namely 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 once again that the discretionary power of the competent authority to grant or reject a registration request is tantamount to the requirement for previous authorization, which is not compatible with *Article 2 of the Convention* (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 74). *Under these conditions, the Committee once again urges the Government to register without delay those trade unions which have fulfilled the legal requirements and to provide information in this respect in its next report.*

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

The Committee observes that, in its communication dated 31 July 2012, the ITUC reiterates its previous comments.

The Committee further notes the comments made by the International Organisation of Employers (IOE) on the right to strike in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

### **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. It must therefore repeat its previous observation which read as follows:

*Article 4 of the Convention. Collective bargaining.* The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC), on the repeated refusal to recognize a number of trade unions, namely the Workers' Union of Equatorial Guinea (UST), the Independent Service Union (SIS), the Teachers' Trade Union Association (ASD) and the Rural Workers' Organization (OTC), and the lack of a legal framework for the development of collective bargaining. The Committee again stresses that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention. *The Committee urges the Government once again to adopt the necessary measures without delay to create appropriate conditions for the establishment of trade unions that are able to 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 ITUC's comments, the right of workers in the public administration to establish trade unions has still not been recognized in law, despite the fact that section 6 of the Act on Trade Unions and Collective Labour Relations, No. 12/1992, provides that the right to organize of employees in the public administration shall be regulated by a special law. The Committee notes that the ITUC also indicates that the legal framework for collective bargaining is deficient and ambiguous. *The Committee urges the Government to indicate whether a special law has been adopted and whether it establishes the right to organize and to collective bargaining of workers in the public administration, and asks it to send detailed information on the application of the Convention to public servants not engaged in the administration of the State. The Committee reminds the Government that it may seek technical assistance on this matter from the Office, and expresses the firm hope that it will take without delay all measures within its reach to resume constructive dialogue with the ILO.*

*Part V of the report form. Application in practice.* *The Committee asks the Government to send statistics of the number of employers' and workers' organizations, the number of collective agreements concluded with these organizations and the number of workers and the sectors 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 ITUC dated 31 July 2012, reiterating its previous comments.

## 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 requested the Government to amend the Labour Proclamation to provide for the reinstatement of trade union leaders in cases of unjustified dismissal (section 28(3) of the Proclamation), and also for protection against other prejudicial acts and acts of anti-union discrimination against workers affiliated to a trade union. In its last report, the Government once again indicates that the Ministry of Labour and Human Welfare consulted several studies to amend section 23 of the Labour Proclamation with a view to broadening protection, both from all acts of anti-union discrimination and from any dismissal relating to trade union activity or membership. ***The Committee once again expresses the hope that the Government will take the necessary measures without delay to amend the Labour Proclamation in this regard.***

*Sanctions applicable in cases of anti-union discrimination or acts of interference.* In its previous comments, the Committee recalled that the fine of 1,200 Eritrean nakfa (ERN), established in section 156 of the Labour Proclamation as a penalty for anti-union discrimination or acts of interference, is not severe and dissuasive enough as a means of protection and requested it to take necessary measures to provide heavier and more dissuasive sanctions. The Committee notes that in its last report the Government reiterates that sections 703 and 721 of the Transitional Penal Code would apply in the event of repeated violations of the right to organize established in the national legislation, though to date no sentences have been handed down for such violations. The Government also indicates that it is working with the social partners to amend section 156. ***The Committee requests the Government to provide information on any progress made in amending section 156 of the Labour Proclamation so as to provide heavier and sufficiently dissuasive sanctions against persons guilty of anti-union discrimination or acts of interference.***

*Articles 1, 2, 4 and 6. Domestic workers.* In its previous comments, the Committee expressed the firm hope that the next regulation on domestic work will explicitly extend the trade union rights enshrined in the Convention to domestic workers. The Committee notes the Government's indication that domestic workers are not excluded from the definition contained in section 3 of the Labour Proclamation and therefore do have the right to organize and to collective bargaining. Furthermore, the Government indicates that it will take all necessary measures to adopt a regulation that is consistent with the Convention. ***The Committee once again expresses the firm hope that, in the interest of legal certainty, the new regulation on domestic work will explicitly grant the rights enshrined in the Convention to domestic workers and that the Government will be in a position to indicate the adoption of the above regulation in its next report.***

*Article 6. Right to collective bargaining in the public sector.* In its previous comments the Committee requested the Government to take the necessary measures to improve its legislation on public servants in respect of the rights enshrined in the Convention including the right to collective bargaining of public servants who are not engaged in the administration of the State. The Committee notes the Government's indication that public servants are split into two categories, those who work in the Central Personnel Administration (CPA) and those who work in public or semi-public enterprises. The latter are covered by the Labour Proclamation and therefore, like other workers, have the right to organize and to collective bargaining established in the Labour Proclamation. Regarding CPA workers, the Government indicates that the draft Public Service Code provides for the right to organize. However, the Government indicates that up to now no collective bargaining has been undertaken between the Government and these workers on the question of wages or other privileges. ***The Committee hopes that the new Public Service Code will explicitly recognize for public servants in the CPA, the rights enshrined in the Convention, particularly the right to collective bargaining of public servants not engaged in the administration of the State and that the Government will be in a position to indicate the adoption of the above Code in its next report.***

*Application of the Convention in practice.* The Committee notes the observations of 31 July 2012 from the International Trade Union Confederation's (ITUC) reporting that in practice there is no collective bargaining in Eritrea. ***The Committee requests the Government to provide its comments in response to the ITUC's allegations. More generally, the Committee requests the Government to indicate in its next report any measures taken to promote the development of collective bargaining in the private and public sectors and to indicate collective agreements signed, the sectors concerned and the number of workers covered.***

## Ethiopia

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

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee also notes the comments submitted by the International Trade Union Confederation (ITUC), in a communication dated 31 July 2012, and by Education International (EI), in collaboration with the National Teachers'

Association (NTA), in a communication dated 31 August 2012, which refer to issues pending before this Committee and the Committee on Freedom of Association (CFA) in Case No. 2516 (exclusion of various categories of workers, primarily in the public sector, from the right to form and join trade unions, lack of independent investigations of serious violations of trade unionists' rights). The Committee notes the latest conclusions and recommendations of the CFA in this case (see 365th Report, November 2012, paragraphs 681–692). It also notes the Government's reply to the previous comments of the ITUC and EI.

*Teachers' associations.* In its previous comments, the Committee had urged the Government to ensure that the NTA is registered without delay so that teachers may fully exercise their right to form organizations for furthering and defending teachers' occupational interests. The Committee notes with *regret* that the Government merely reiterates in its report the information it had previously provided to this Committee and to the CFA in Case No. 2516. The Committee notes the latest conclusions and recommendations of the CFA which are relevant in this regard, in particular in relation to the Charities and Societies Proclamation and with regard to the question of the registration of the NTA. While noting that in the past the Government has indicated that, in order to be registered, the NTA should revise its application in accordance with the Charities and Societies Proclamation, the Committee reiterates its comments concerning this Proclamation. Deploring that more than three years after the NTA's request for registration, this organization is still not registered, the Committee is bound to recall, once again, 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, and represent their members adequately. ***The Committee strongly urges the Government to take all necessary measures to ensure that the appropriate authorities register the NTA without further delay so that teachers may fully exercise their right to form organizations of their own choosing for the furthering and defence of teachers' occupational interests. It requests the Government to provide information on the concrete steps taken in this regard.***

*Civil servants and employees of the state administration.* In its previous comments, the Committee noted that neither the Labour Proclamation nor the Civil Servant Proclamation was guaranteeing civil servants and employees of the state administration the exercise of their freedom of association rights. The Committee notes with *regret* that the Government's report does not indicate that progress has been made in this regard. The Government merely reiterates its previous statement that: (1) the country is under a comprehensive civil service reform programme which will guarantee the rights of all citizens in the country, including civil servants; (2) the right of workers, including civil servants, to form an association is enshrined under article 42 of the Constitution; (3) civil servants can organize under professional associations; and (4) public school teachers are presently enjoying the enabling environment to exercise their constitutional right to form an association, as most have, by being members of the Ethiopian Teachers Association (ETA). In relation to this latter point, the Committee wishes to recall that the right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in practice, and that this implies, in particular, the effective possibility for forming and joining organizations independent of those which already exist in the country. ***The Committee urges the Government to take, without delay, concrete measures, including in the framework of the civil service reform, in order to fully guarantee the right of civil servants, including teachers in public schools, and employees of the state administration, to establish and join organizations of their own choosing for the promotion and defence of their occupational interests. It requests the Government to provide information on progress made in this respect.***

### **Labour Proclamation (2003)**

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations.* In its previous comments, the Committee had requested the Government to ensure the right to organize of the following categories of workers who were 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; and judges and prosecutors. The Committee notes the Government's indications that: (1) it is studying the question of this first category of workers, so that these employment relations could be part of the Labour Proclamation; (2) the process of preparing the regulation governing the conditions of work of workers under contract of personal service for non-profit-making purposes has not yet been finalized; (3) it is examining the necessity of setting a regulation to address the working conditions of managerial employees, including the right to form an organization; and (4) the Constitution guarantees the right to organize for any lawful purposes or causes and that, accordingly, judges and prosecutors are able to form associations of their own. ***The Committee trusts that the necessary measures will be taken, without delay, to ensure that the abovementioned categories of workers enjoy the rights afforded by the Convention, and that the necessary technical assistance of the Office, requested by the Government, will be provided in the near future. It requests the Government to provide information on all progress made in this respect, as well as on any existing organizations of workers in these various sectors.***

*Article 3. Right of workers' organizations to organize their activities and formulate their programme.* In its previous comments, the Committee had requested the Government to amend the following sections of the Labour Proclamation: section 136(2), concerning the list of essential services in which strike action is prohibited; sections 143(2) and 160(1), concerning conciliation and arbitration procedures; and section 158(3), relating to the quorum and majority

required to initiate a strike. The Committee notes the Government's indication concerning the list of essential services that it may not be very far from considering the issue. It also notes the Government's indications in relation to the intention behind sections 143(2) and 160(1), as well as its remarks concerning the required quorum and majority established in section 158(3). *The Committee expresses the hope that the necessary measures will be taken, without delay, and in full consultation with the social partners, to amend the abovementioned sections of the Labour Proclamation, to bring it into conformity with the principles that the Committee has been recalling in its previous comments. It requests the Government to provide information on all progress made in this respect.*

*Cancellation of registration (section 120 of the Labour Proclamation).* The Committee notes the Government's indication that the cancellation of registration of an organization (which used to be an administrative measure) is now a decision taken by the competent court, to which the matter is referred by the ministry. *The Committee once again requests the Government 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(1)(c) until they have been brought into conformity with the provisions of the Convention.*

*The Committee once again 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. The Committee encourages the Government to seek technical assistance from the Office on all the issues raised in its comments.*

## Fiji

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2002)**

*Comments of workers' and employers' organizations.* The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 31 July and 31 August 2012, on the application of the Convention. It further notes the communication of the Fiji Mine Workers Union (FMWU) of 19 September 2012, concerning matters examined by the Committee in the framework of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee notes the comments made by the International Organization of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

*ILO direct contacts mission.* The Committee notes the latest conclusions and recommendations reached by the Committee on Freedom of Association (CFA) in the framework of Case No. 2723 concerning, inter alia, acts of assault, harassment, intimidation and arrest of trade unionists, in particular, that it expresses its grave concern that the ILO direct contacts mission that visited Fiji in September 2012, was not allowed to continue its work, and that it draws the Governing Body's attention to the extreme seriousness and urgency of the issues involved in this case. The Committee *deeply regrets* this loss of opportunity to clarify the facts and assist the Government and the social partners in finding appropriate solutions to the issues raised by the Committee and the CFA. *It hopes that a new mission may visit the country in the near future in order to deal with the matters examined by the ILO supervisory bodies.*

*Trade union rights and civil liberties.* The Committee reiterates its *great concern* about the numerous acts of assault, harassment, intimidation and arrest of trade union leaders and members for their exercise of the right to freedom of association, previously reported by the ITUC and Education International (EI).

*Acts of assault.* Concerning the alleged physical attacks on several trade unionists, the Committee notes the Government's statement that: (i) to date, neither the Police Department nor the Office of Public Prosecutions has received any complaint filed by Mr Felix Anthony or Mr Mohammed Khalil for the alleged physical assaults, and investigations have thus not been initiated; and (ii) internal legal mechanisms within the country itself have therefore not been fully utilized by these two persons.

The Committee recalls that the resolution concerning trade union rights and their relation to civil liberties, adopted by the International Labour Conference (ILC) at its 54th Session in 1970, lists as first among the liberties essential for the normal exercise of trade union rights the right "to freedom and security of person" since this fundamental right is crucial to the effective exercise of all other liberties, in particular, freedom of association. The Committee once again emphasizes that it has always considered that, in the event of assaults on the physical or moral integrity of individuals, an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. Moreover, as regards allegations of the physical ill-treatment of trade unionists, the Committee has always recalled that governments should give precise instructions and apply effective sanctions where cases of ill-treatment are found. 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. *The Committee therefore urges the Government to take all necessary measures without delay to ensure the full respect of the above principles. It also urges the Government, even if the victims have lodged a complaint in the meantime, to conduct ex officio an independent investigation without delay into the alleged acts of assault, harassment and intimidation against Mr Felix Anthony, National Secretary of the Fiji Trades Union Congress (FTUC) and General Secretary of the Fiji Sugar Workers; Mr Mohammed Khalil,*

*President of the Fiji Sugar and General Workers Union (FSGWU) – Ba Branch; Mr Attar Singh, General Secretary of the Fiji Islands Council of Trade Unions (FICTU); Mr Taniela Tabu, General Secretary of the Viti National Union of Taukei Workers (VNUTW); and Mr Anand Singh, lawyer. The Committee requests the Government to transmit detailed information with regard to the outcome of such inquiry and the action taken as a result. With particular regard to the reported act of assault against a union leader in retaliation for statements made by his colleague at the ILC in 2011, the Committee reiterates that the functioning of the Conference would risk being considerably hampered and the freedom of speech of the workers' and employers' delegates paralysed if the relevant delegates or their associates were victims of assault or arrest due to the expression of views at the Conference. It urges the Government to ensure that no trade unionist suffers retaliation for the exercise of freedom of expression.*

*Arrest and detention.* With respect to the arrested trade unionists (Mr Felix Anthony, Mr Daniel Urai, and Mr Nitendra Goundar), the Committee notes that the ITUC indicates that Mr Daniel Urai, the FTUC President, has two cases pending in court which have still not been heard: one for preparing union members for collective bargaining and the other one for having allegedly incited political violence by urging to overthrow the Government; and that, in the first case which is pending for almost a year, the prosecution has not been able to produce the required disclosures including the identification of the complainant.

The Committee also notes the Government's summary of events: (i) Mr Nitendra Goundar and Mr Daniel Urai convened and conducted a meeting with the Hotel Workers' Union at the Mana Island Resort on 3 August 2011, without the appropriate permit under the Public Emergency Regulations (PER) and allegedly made inciting remarks against the Government of Fiji; (ii) police arrested the two trade unionists and detained them for questioning in the conference room of the Nadi police station for one day; (iii) Mr Goundar and Mr Urai were charged on 4 August 2011 for breaches under the PER; (iv) by their own admission, they erred by not applying for the relevant permit to hold a public meeting but denied allegations that they made statements against the current Government; (v) at no time were the two unionists coerced, threatened or assaulted; and (vi) the hearing of the case is scheduled on 4 June 2012.

While having previously noted that Mr Felix Anthony, Mr Daniel Urai, and Mr Nitendra Goundar had been released from custody, the Committee notes with *concern* that the criminal charges of unlawful assembly brought against Mr Goundar and Mr Urai on the grounds of failure to observe the terms of the PER are still pending. The Committee considers that, while being engaged in trade union activities does not confer immunity from sanctions under ordinary criminal law, the authorities should not use legitimate trade union activities as a pretext for arbitrary arrest or detention or criminal charges. *With respect to the abovementioned trade unionists, the Committee therefore urges the Government to take the necessary measures to ensure that all charges against them are immediately dropped, and to provide information of any developments in this regard without delay, including the outcome of the case hearing that the Committee understands has been deferred.* The Committee also recalls that the arrest and detention, even for short periods, of trade union leaders and members, engaged in their legitimate trade union activities constitute a grave violation of the principles of freedom of association (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 31). *It urges the Government to take full account of this principle in the future.*

*Restrictions to freedom of assembly and expression.* Furthermore, in regard to its previous comments relating to freedom of assembly and expression, the Committee notes the ITUC's view that many of the powers found in the recently repealed PER are included and expanded in the 2012 Public Order (Amendment) Decree (POAD); in particular, the ITUC criticizes the broad definition of "act of terrorism" that could be used for charging trade unions, the increased prison sentence of up to five years for holding a meeting without permission and the circumstances in which the police may refuse a permit. The Committee, moreover, notes the additional allegations that: (i) while union meetings are currently being held with greater frequency, the authorities (police) are selective in their responses to the permissions sought for meetings; (ii) police scrutinize meeting agendas and the content of speeches before they issue any permits; (iii) the FTUC Assistant National Secretary, Rajeshwar Singh, who represents the FTUC on the Air Terminal Services (ATS) Board was removed from the Board on 31 December 2011 by the Government on the grounds that he had a meeting with Australian trade unionists and allegedly called for a boycott; and (iv) freedom of expression is being limited, for example, in April 2012, a daily newspaper has refused to print a paid advertisement from the FTUC on Labour Day for fear of reprisal from the regime.

The Committee takes due note of the Government's indication that: (i) the PER have been lifted as of 7 January 2012 and that Fiji is once again guided by the Public Order Act as modernized through the POAD, which is an important step in the ongoing elaboration of the new constitution; (ii) notwithstanding the above, the PER did not prohibit trade unions from holding public meetings so long as they abided by the conditions required; (iii) over the last five years, the Government has approved numerous meeting permits; and (iv) today in Fiji, trade unions under the Public Order Act are holding meetings and conducting their important work in promoting the rights and well-being of workers in Fiji.

While welcoming the lifting of the emergency legislation in the form of the PER on 7 January 2012, the Committee notes with *concern* certain provisions of the Public Order Act as amended by the POAD, in particular, the new subsection (5) of section 8, according to which "the appropriate authority may, in its discretion, refuse to grant a permit under this section to any person or organization that has on any previous occasion been refused a permit by virtue of any written law or, to any person or organization that has on any previous occasion failed to comply with any conditions imposed with respect to any meeting or procession or assembly, or any person or organization which has on any previous

occasion organized any meeting or procession or assembly which has prejudiced peace, public safety and good order and/or which has engaged in racial or religious vilification or undermined or sabotaged or attempted to undermine or sabotage the economy or financial integrity of Fiji". The Committee considers that the wording of this provision could be used in such a way as to make it difficult for trade unions to hold public meetings, especially given the previous allegations of the use of the PER to restrict their rights in this regard. It once again recalls that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, constitute civil liberties which are essential for the normal exercise of trade union rights (ILC resolution concerning trade union rights and their relation to civil liberties, adopted at the 54th Session, 1970). ***Welcoming the decision to temporarily suspend the application of section 8 of the Public Order Act as amended, the Committee requests the Government to consider abrogation or amendment of the POAD so as to ensure that the right to assembly may be freely exercised. The Committee urges the Government once again to take full account of the principles announced above in the future and refrain from unduly impeding the lawful exercise of trade union rights in practice.*** With regard to Mr Rajeshwar Singh, FTUC Assistant National Secretary, the Committee is of the view that addressing trade unions abroad is part of the normal exercise of trade union rights. ***It requests the Government to reinstate him in his position representing workers' interests on the ATS Board.***

*Legislative issues. Essential National Industries Decree No. 35 of 2011.* The Committee had previously urged the Government to take the necessary measures to amend the provisions of the Essential National Industries Decree without delay, in full consultation with the social partners, so as to bring it into conformity with the Convention. It notes that, in the view of the ITUC, the Decree continues to devastate trade unions in the covered sectors. The Committee observes that, in the framework of Case No. 2723, the CFA has recalled its previous conclusion that numerous provisions of the Decree and its implementing regulations give rise to serious violations of the principles on freedom of association and collective bargaining, for example, section 6 (cancellation of all existing trade union registrations in essential national industries); sections 10–12 (unions to apply to the Prime Minister to be elected as bargaining unit representative; determination by the Prime Minister of composition and scope of a bargaining unit for election purposes; conduct and supervision of elections by the Registrar); section 14 (50 per cent plus one necessary for a union to be registered as representative of the bargaining unit); section 7 (union officials to be employees of the relevant company); section 27 (providing for serious restrictions of the right to strike); section 26 (lack of judicial recourse for rights disputes; compulsory arbitration by the Government of disputes beyond a certain financial threshold); section 24(4) (prohibition of automatic dues deduction for workers in essential national industries).

The Committee welcomes that, according to the report of the direct contacts mission, within the framework of the current process of developing a new non-race based constitution for Fiji to be ready by early 2013 through an inclusive national dialogue paving the way to the first democratic elections scheduled in 2014, and in view of the fact that the new Constitution will reflect the eight fundamental ILO Conventions and that national labour legislation will need to be compatible with it, the tripartite Employment Relations Advisory Board (ERAB) subcommittee has been tasked with the review of all existing Government decrees relating to labour in terms of their conformity with the ILO fundamental Conventions. The Committee notes the Government's indication that the ERAB subcommittee, the last meeting of which took place on 13 August 2012, is expected to be reconvened with the views of the Public Service Commission (PSC) and the Attorney-General, and that the work of the ERAB and its subcommittee is anticipated to be concluded by October 2012. The Committee further welcomes that, according to the CFA conclusions in the framework of Case No. 2723, the ERAB subcommittee agreed, as stated by the complainant, to delete most of the provisions of the Essential National Industries Decree considered as offending. ***The Committee trusts that the measures agreed by the tripartite ERAB subcommittee will be actively pursued and given effect in the near future, so as to bring the legislation into conformity with the Convention, and requests the Government to provide information on any progress made in this regard.***

Noting with ***deep concern*** that, according to the ITUC, public sector unions and unions representing "essential national industries" face serious financial difficulties or even struggle for survival due to the discontinued check-off facility, the Committee observes that, in the framework of Case No. 2723, the CFA has considered that the withdrawal of a facility of existential importance to unions that was previously granted could, in the current context, be viewed as another attempt to weaken the Fiji trade union movement. The Committee underlines that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations. ***The Committee therefore requests the Government to make the necessary arrangements to ensure that the check-off facility is fully reactivated in the public sector and the sectors considered as essential national industries.***

*Employment Relations Promulgation of 2007 (ERP).* The Committee previously commented on the necessity to amend the following provisions of the ERP in order to bring them into conformity with the Convention.

- section 3(2) so as to ensure that prison guards enjoy the right to establish and join organizations of their own choosing;
- section 125(1)(a) so as to ensure that refusals to register an organization under the said section are determined on the basis of objective criteria. While noting that the Government indicates that since 2007 the Registrar has never refused any trade union application to register under the ERP, the Committee still considers that this provision



- confers upon the authorities excessively wide discretionary powers in deciding whether or not an organization meets all the conditions for registration;
- section 119(2), in order to enable workers exercising more than one occupational activity in different occupations or sectors to join the corresponding trade unions as full members. The Committee notes that, according to the Government, all Fijian trade unions have agreed to the one-union policy per person in the context of all other rights that have been packaged under the ERP. The Committee considers that demanding that workers belong to no more than one union, in order to sign an application for registration, may unduly infringe upon the right of workers to join organizations of their choosing;
  - section 127, which provides that officers of a registered trade union must have been engaged or occupied for a period of not less than six months in an industry, trade or occupation with which the union is directly concerned; and forbids non-citizens to be trade union officers;
  - section 184 so as to ensure that the issue of the expulsion from the trade union of members for refusal to participate in a strike is left to trade union constitutions and rules. The Committee notes that the Government indicates that the trade unions themselves, citing the fact that they do not have the capacity to resolve internal grievances amongst themselves, requested the Registrar to become involved in these cases. Whilst preferring that unions independently resolve their issues for fear that its participation may be perceived by the ILO to be interference into trade union matters, the Registrar at the behest of the unions has successfully mediated and facilitated the resolution of some of these cases. The Committee notes this information but considers that it should ultimately be up to the trade unions concerned to decide on the expulsion or sanctions against its members, regardless of the invoked reasons;
  - section 128, so as to ensure that only complaints filed by a certain fixed percentage of union members may give rise to an inspection of union accounts. The Committee takes note of the Government's statement that the current practice is consistent with the ILO Recommendations, since the good governance oversight, which is necessary because trade unions in Fiji receive public funds from their members for their daily operations, is only activated when serious complaints of abuse of such funds are raised with the Registrar, or when the audited accounts reveal significant anomalies that warrant investigations. However, the Committee must recall that a provision which grants authorities the power to examine the books of an organization at any time, unless there is a complaint from a certain percentage of the trade union members, infringes the Convention;
  - section 175(3)(b) so as to ensure that, only a simple majority of the votes cast in a strike ballot is required. The Committee notes the Government's indication that this has been agreed by all trade unions and unanimously passed by Fiji's multiparty Government and the Lower House in 2006. In these circumstances, the Committee must once again recall that although a ballot requirement does not, in principle, raise problems of compatibility with the Convention, 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 a reasonable level;
  - section 180 so as to ensure that responsibility for declaring a strike illegal lies with an independent body which has the confidence of the parties involved. It notes that the Government shares the sentiment of the ILO and that the independence element of this provision is currently under scrutiny by the ERAB subcommittee;
  - sections 169, 170, 181(c) and 191(1)(c), so as to ensure that their cumulative effects do not amount to compulsory arbitration. The Committee notes that the Government indicates that the policy design of the ERP integrates both the promotion of good faith employment relations and productivity improvement. In practice, this means that those who create employment grievances or disputes have the primary responsibility to solve them and not the State. However, when the parties have exhausted this internal resolution process with good faith, for effective governance, especially in the context of financial global economic crisis, either party to the dispute or the State has to be accorded the right to refer the unresolved dispute to the State mechanism so that the dispute can be amicably resolved speedily without adverse effects to the nation as a whole. In this regard, the referral is not perceived as compulsory, and the system is working very effectively. Nonetheless, the Committee's request is under discussion at the ERAB subcommittee;
  - section 256(a), which, when read with section 250, provides for a possible penalty of imprisonment in case of the staging of an unlawful strike. The Committee notes the Government's statement that it takes note of the ILO position in this matter and is willing to review these provisions through the tripartite dialogue in the ERAB subcommittee. However, the Government indicates that, prior to the ERP, trade unions have abused this right to strike provision due to bad faith and the lack of a deterrent mechanism, and that, while fully recognizing the right of workers to go on strike as effectively protected under the ERP, the Government is bound to also include effective deterrents for those who abuse this right. The Committee wishes to recall that no penal sanctions should be imposed against a worker for having carried out a peaceful strike, and therefore that 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 penal law have been committed, and can be imposed pursuant to legislation punishing such acts, such as the Penal Code.

The Committee welcomes the Government's indication that a national peak tripartite body, the ERAB, is responsible for any amendments to the ERP, and that a tripartite subcommittee of the ERAB has been given the mandate to look into the need for any amendments to the ERP and is going through all proposals for amendments before submitting them to the Board for endorsement. The Government expresses the hope to conclude the amendment process in 2012, reiterates its commitment to honour its obligations under the core ILO Conventions in the new Constitution and states that this proactive and inclusive social dialogue in the labour market through the tripartite ERAB to review current labour market policies, laws, institutions and practices is a vital part of the Government's wider national dialogue in the development of Fiji's modern and non-discriminatory Constitution to be in place early 2013, paving the way for the general election in 2014. ***The Committee trusts that the issues raised above will be part of the deliberations of the ERAB subcommittee and that, in the framework of this exercise, due account will be taken of the Committee's comments with a view to bringing the ERP into conformity with the Convention. It requests the Government to indicate, in its next report, the results of the ERAB's deliberations.***

*Decrees relating to the public sector.* The Committee previously noted that the Employment Relations (Amendment Decree) No. 21 excluded 15,000 public service workers from the coverage of the ERP who thus lost overnight their fundamental and other trade union rights, and urged the Government to take all necessary measures to ensure that public servants enjoy the guarantees enshrined in the Convention. The Committee notes the Government's indication that, since the passing of the Public Service (Amendment) Decree (Decree No. 36), all public servants in Fiji enjoy similar employment safeguard mechanisms as those foreseen in the ERP for the private sector. The Committee welcomes the adoption of the Public Service (Amendment) Decree, which, after the exclusion of public servants from the ERP, restores the protection of their fundamental rights including trade union rights.

The Committee had also noted that the State Services Decree No. 6 of 2009, the Administration of Justice Decrees Nos 9 and 10 of 2009 and No. 14 of 2010 as amended and the Employment Relations (Amendment) Decree No. 21 of 2011 issued by the Government, collectively eliminated the access of workers in the public service to the judicial or administrative review of any executive decision concerning the public service (including on terms and conditions of employment of public servants) and other selected sectors; and terminated any pending or ongoing judicial or administrative proceedings in this regard filed by any individual or organization against the State. The Committee notes the Government's indication that: (i) civil servants have recourse to the High Court of Fiji by way of judicial review should they be unsatisfied with the decision of the PSC Disciplinary Committee; in this regard, the Government refers to the judgment of the *State v. Permanent Secretary for Works, Transport and Public Utilities ex parte Rusiate Tubunuarua & Ors HBJ01 of 2012*, where the High Court ruled that it has full jurisdiction to accept cases from public servants who seek to challenge a decision of the Government or the PSC; and (ii) to facilitate speedy resolutions of employment grievances and disputes, the PSC has implemented a new internal grievance policy that includes the appointment of conciliators within government Ministries and Departments. The Committee welcomes the decision recently rendered by the High Court and the new PSC internal grievance policy. ***It requests the Government to supply a copy of the High Court decision and to take all necessary measures to ensure that, in practice, all public servants may also have recourse to administrative review of decisions or actions of Government entities. Moreover, the Committee requests the Government to provide information on the relevant mechanisms currently available to public servants to address collective grievances, and to indicate the results of the review by the tripartite ERAB subcommittee of all existing Government decrees relating to the public service in terms of their conformity with the ILO fundamental Conventions.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1974)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 31 July and 31 August 2012. ***The Committee requests the Government to provide its observations thereon.*** It also notes the comments made by the International Organisation of Employers (IOE) on the right to strike in a communication dated 29 August 2012 which are dealt with in the General Report of the Committee.

The Committee further notes the latest conclusions and recommendations reached by the Committee on Freedom of Association (CFA) in the framework of Case No. 2723, in particular, that it expresses its grave concern that the ILO Direct Contacts Mission that visited Fiji in September 2012 was not allowed to continue its work, and that it draws the Governing Body's attention to the extreme seriousness and urgency of the issues involved in this case. The Committee ***deeply regrets*** this loss of opportunity to clarify the facts and assist the Government and the social partners in finding appropriate solutions in conformity with freedom of association and collective bargaining principles. ***The Committee hopes that the Direct Contacts Mission may return to the country in the near future within the framework of the mandate bestowed upon it.***

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* With reference to the dispute in the Vatukoula Mining Company (concerning the refusal to recognize a union and the dismissal of striking workers 15 years ago), the Committee previously took note of the Government's statement that various measures had been taken

with regard to the redundant miners of the company, including the striking workers of the Fiji Mine Workers Union (FMWU), in particular, important amounts of money granted for the purpose of rehabilitation or social assistance, re-employment by the new owner, etc. The Committee had also noted with concern that, according to the FMWU, the above information provided by the Government was simply not true, and had requested the Government to engage in exploratory talks with FMWU representatives with a view to reaching a mutually satisfactory settlement. The Committee notes the Government's indication that, in 2007, it allocated US\$600,000 towards the rehabilitation of the redundant miners in the Vatukoula Gold Mine which also included members of the FMWU. The two priority areas for assistance were tertiary education for miners' children and small and micro-enterprise development for the livelihood of the miners' families. According to the Government, the Vatukoula Gold Mines Deed has been signed on 7 December 2009 by the Government and the company, which will see the setting up of the Social Assistance Trust Fund which will benefit around 800 people including the striking workers of the FMWU; the establishment of the Fund would mean that the company would contribute approximately US\$6 million over the next five years, i.e. US\$1.5 million three months from the initial set-up of this Trust Fund. The Government states that it is fully committed to resolving the long pending grievances of the striking workers that were members of the FMWU. In addition, the first payment from the US\$6 million Vatukoula Trust Fund has begun in April 2012, and the payout to mine workers made redundant in 2006 was completed. The Vatukoula Trust Fund Committee screened about 600 applicants and the Government is awaiting the final list of recipients. More than 200 recipients are residing in Vatukoula while the rest are now scattered in other parts of the country. The Committee notes however that, according to the submission of the FMWU received on 19 September 2012, there has been apparently no improvement in the situation. ***The Committee urges the Government to engage with the FMWU representatives with a view to implementing, without any further delay, a mutually satisfactory settlement for assistance to help the remaining workers re-establish themselves, in particular, by ensuring that they are adequately compensated via the Vatukoula Trust Fund in the very near future. It trusts that, after 22 years, this long-standing dispute which has caused great hardship to the dismissed workers will finally and equitably be resolved.***

*Article 4. Promotion of collective bargaining. Essential National Industries Decree No. 35 of 2011.* The Committee notes that, in the view of the ITUC, the Decree continues to negatively affect trade unions in the covered sectors. Observing that, in the framework of Case No. 2723, the CFA has recalled its previous conclusion that numerous provisions of the Essential National Industries Decree and its implementing regulations, give rise to serious violations of the principles on freedom of association and collective bargaining, the Committee considers that the following provisions are not in conformity with the Convention:

- *Bargaining unit.* According to section 2, “bargaining unit” means a group of at least 75 workers employed by the same employer who perform similar types of work. The Committee notes that, according to the ITUC, this is one of the provisions that have devastated trade unions in practice in the sectors covered by the decree. It has had the effect that several unions have not been able to register bargaining units in certain enterprises where they were represented due to the fact that, in many cases, there are fewer than 75 workers in a job classification. The Committee notes the Government's indication that the concept of “bargaining unit” is found in other countries' laws and does not “replace trade unions” as has been claimed, since the two are quite different concepts; and that trade unions will continue to exist and can represent workers within a bargaining unit in a designated corporation in accordance with the Decree. In this regard, the Committee notes, however, with **concern** that the threshold to form bargaining units under the Decree has, in practice, precluded many workers from exercising their collective bargaining rights. ***The Committee urges the Government to take the necessary measures without delay to amend the threshold so as to ensure that the application of this provision does not deny the right to bargain collectively to a considerable number of workers in a given enterprise, especially workers working in small enterprises, and to avoid that the right of workers to be represented by a union is thus rendered purely theoretical.***
- *Elected representatives.* The Committee notes that Part 3 in conjunction with section 2 seek to establish the role of representatives – union or not – as collective bargaining agents. The Committee understands that the term “representative” may include a union delegate or an elected workers' representative. In the absence of any information provided by the Government in this regard, the Committee once again recalls that, where there exists in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned. The Committee also recalls that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, is detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. ***The Committee once again urges the Government to take the necessary measures without delay to ensure that the application of the legislation will be in full conformity with the above principles.***
- *Annulment of collective agreements.* According to section 8, all existing collective agreements are null and void 60 days after the Decree enters into force, and new agreements are to be negotiated by the parties before the expiry of the 60 days; otherwise, the company may unilaterally implement new terms and conditions through a new collective agreement or individual contracts. The Committee emphasizes that legislation which annuls freely negotiated collective agreements in force and requires their renegotiation is contrary to the principle of free and voluntary collective bargaining enshrined in the Convention. In addition, the Committee observes that the

Government has provided no clear and imperative connection between any need for economic stabilization in a specific context and the existing collective agreements, and that the legislation has effect on whole sectors without any reference to specific clauses that cannot be implemented in the framework of an acute national crisis. **Considering that the abrogation of collective agreements, as well as the unilateral imposition of conditions of employment failing agreement, is contrary to the obligation to encourage and promote collective bargaining, and that section 8 constitutes a direct violation of Article 4 of the Convention, the Committee urges the Government to abrogate this provision.**

- *Renegotiation of collective agreements in case of financial distress.* The Committee notes that section 23 provides that employers may renegotiate all their collective agreements if they are considered to be in financial distress; if bargaining fails to result in a new collective agreement, the employer may submit its proposals for a new or amended collective agreement to the Prime Minister for review, and the Prime Minister shall make a decision on the new terms and conditions of the new or amended collective agreement. With reference to the principles stated above in the context of the annulment and renegotiation of collective agreements, the Committee considers that section 23 amounts to compulsory arbitration by public authorities at the request of one of the parties. **Considering that section 23 violates the principle of free and voluntary collective bargaining enshrined in the Convention, the Committee therefore requests the Government to abrogate this provision.**
- Moreover, while noting the Government's indication that, where a union has been recognized for collective bargaining purposes, the employer is obliged to recognize and negotiate in good faith with the union representatives, the Committee notes with **deep concern** that, according to the ITUC, the Essential National Industries Decree has had in practice disastrous effects on the trade unions representing industries coming under its scope and even beyond: for example, several unions have been unable to register bargaining units due to the high threshold of 75 workers employed by the same employer who perform similar types of work, stipulated in section 2 of the Decree; almost no collective agreements have been concluded since the adoption of the Decree; efforts of unions to initiate collective bargaining with the employer and conduct good-faith negotiations usually remained to no avail; instead, unilateral changes to terms and conditions of employment have been imposed or threatened to be imposed by the employer; the check-off facility has been fully or partially withdrawn; union dues have sometimes been remitted directly to the bargaining unit rather than to the trade union concerned; and the delay in collective bargaining has entailed a generalized haemorrhage in union membership and thus a serious loss of resources to defend workers' interests. The Committee had previously urged the Government to take the necessary measures to amend the provisions of the Decree without delay, in full consultation with the social partners, so as to bring it into conformity with the Convention. The Committee welcomes that, according to the report of the Direct Contacts Mission, within the framework of the current process of developing a new non-race based Constitution for Fiji to be ready by early 2013, through an inclusive national dialogue paving the way to the first democratic elections scheduled in 2014, and in view of the fact that the new Constitution will reflect the eight fundamental ILO Conventions and that national labour legislation will need to be compatible with the Constitution, the tripartite Employment Relations Advisory Board (ERAB) subcommittee has been tasked with the review of all existing government decrees relating to labour in terms of their conformity with the ILO fundamental Conventions. The Committee notes the Government's indication that the ERAB subcommittee, the last meeting of which took place on 13 August 2012, is expected to be reconvened towards the end of September with the views of the Public Service Commission and the Attorney-General, and that the work of the ERAB and its subcommittee was anticipated to be concluded by October 2012. The Committee further welcomes that, according to the conclusions reached by the CFA in the framework of Case No. 2723, the ERAB subcommittee agreed, as stated by the complainant, to delete most of the provisions of the Essential National Industries Decree that were considered offending. **The Committee trusts that the measures agreed by the tripartite ERAB subcommittee will be actively pursued and given effect in the near future, so as to bring the legislation into conformity with the Convention, and requests the Government to provide information on any progress made in this regard.**

*Counter-Inflation (Remuneration) Act.* Previously, the Committee noted the Government's indication that, in the framework of the review of outdated laws, the Government was exploring, in light of the recently adopted commercial legislation, the need of retaining the Counter-Inflation (Remuneration) Act. The Committee had requested the Government to indicate the measures taken or contemplated so as to amend section 10 of the Act, which envisages, if need be, the restriction or regulation of remuneration of any kind by order of the Prices and Incomes Boards, and stipulates that any agreement or arrangement which does not respect these limitations will be illegal and deemed to be an offence. In the absence of any information provided by the Government, the Committee considers that this provision allows for excessive restrictions to collective bargaining. **The Committee hopes that, in the framework of the above reform, the Government will take all necessary measures to ensure that section 10 of the Counter-Inflation (Remuneration) Act is abrogated. The Committee requests the Government to provide information on any developments in this respect.**

## Georgia

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 31 July 2012, Education International (EI) and the Educators and Scientists Free Trade Union of Georgia (ESFTUG) in a communication dated 31 August 2012, and the Georgian Trade Unions Confederation (GTUC) in a communication dated 21 September 2012, referring to the issues raised by the Committee below. The Committee notes the Government's reply to these communications. It observes, however, that the Government's observations do not address in detail the issues raised.

The Committee further notes the Government's latest communication dated 22 November 2012 in which it expresses its strong commitment to collaborate with the social partners and the ILO in order to execute respective changes, including amendments in labour legislation. The Committee welcomes this cooperative spirit and trusts that its comments below will be of assistance in this process.

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* The Committee recalls that it had previously noted that pursuant to section 5(8) of the Labour Code, an employer was not required to substantiate his/her decision for not recruiting an applicant, even in the event of an allegation of anti-union discrimination, and considered that the application of this section, in practice, might result in placing on a worker an insurmountable obstacle when proving that he/she was not recruited because of his/her trade union activities. The Committee had also noted that, according to sections 37(1)(d) and 38(3) of the Code, the employer has a right to terminate a contract at his/her initiative with an employee, provided that the employee is given one month's pay, unless otherwise envisaged by the contract. The Committee considered that, in light of the absence of explicit provisions banning dismissals by reason of union membership or participating in union activities, the Labour Code did not offer sufficient protection against anti-union dismissals. It therefore requested the Government to take the necessary measures to revise sections 5(8), 37(1)(d) and 38(3) of the Code in consultation with the social partners, so as to ensure that it provides for an adequate protection against anti-union discrimination. It further requested the Government to provide detailed information on the application of the Convention in practice, including statistics on the number of confirmed cases of anti-union discrimination, the remedies provided and sanctions imposed.

The Committee notes that in its report the Government, while stressing that it pays vital attention to the prohibition of anti-union discrimination and explores the possibility to better address the issue in order to ensure a clear and better articulated prohibition of anti-union discrimination, indicates that the legislation in force provides guarantees of freedom of association and prohibits any kind of discrimination based on membership in any type of association, including trade unions. In this respect, it once again refers to the general prohibition of anti-union discrimination enshrined in the national Constitution (article 26(1)), the Law on Trade Unions (sections 2(3) and 11(6)), the Labour Code (section 2(3) and (6)), and the Criminal Code (sections 142 and 146). The Government indicates that prohibition of anti-union discrimination is applicable both at the recruitment and employment termination stages and that penal sanctions may be applied in case of violation of workers' rights. An employer's request to disclose membership in any association, including trade unions, during recruitment, is illegal and punishable. The Government points out that there are no reported cases when a person was not recruited based on his/her trade union membership. Furthermore, the Government indicates that it was able to retrieve ten cases in which trade union members appealed to the courts and that only one involved allegations of anti-union discrimination. In this respect, the Government indicates that most of the cases in which the GTUC claims discrimination concern dismissals of trade union leaders without prior consent of the trade union and not alleged anti-union discrimination per se.

With regard to section 37 of the Labour Code, the Government reiterates that this provision does not stipulate that an employer can dismiss a worker without any reason, but rather that one of the grounds for suspending labour relations is the termination of a labour contract, which is possible upon the initiative of one of the parties or pursuant to the provisions of the contract. If a dismissed worker appeals to the court, the employer is obliged to provide arguments and reasons for the dismissal to the court. Both parties must provide facts and arguments and burden of proof lies with both of them (section 102 of the Code of Civil Procedure). Accordingly, an employer is obliged to provide facts to justify that the dismissal of a worker was not based on an illegitimate reason. The Government refers to the ruling of the Supreme Court (Case No. 343-327-2011, 1 December 2011), according to which, in the course of the termination of a labour contract, the fundamental human rights, including protection against discrimination envisaged by the Labour Code, should be ensured. Thus, in case of a dismissal of a worker, it should be meaningfully investigated whether the dismissal was based on discriminatory grounds; in this case, the burden of proof lies with the employer.

The Committee notes that the Supreme Court case referred to by the Government concerns a dismissal of a trade union leader and that according to the court's reasoning, the Labour Code allows termination of employment of any employee, including an elected trade union officer. According to the court, election to a trade union office does not provide any additional privileges. In this respect, the Committee considers that, while the Convention requires protection against acts of anti-union discrimination in relation to all workers, the protection provided for in the Convention is particularly important in the case of trade union representatives and officers. One of the ways of ensuring this protection is

to provide that trade union representatives may not be dismissed or otherwise prejudiced either during their term of office, or for a specified period following its expiry. With regard to the protection at the time of recruitment, the Committee once again recalls that workers may face many practical difficulties in proving the real nature of denial of employment, especially when seen in the context of blacklisting of trade union members, which is a practice whose very strength lies in its secrecy. Since it may often be difficult, if not impossible, for a worker to prove that he/she has been the victim of an act of anti-union discrimination, legislation could provide ways to remedy these difficulties, for instance by stipulating that grounds for the decision of non-recruitment should be made available upon request.

The Committee notes with *concern* numerous allegations of anti-union dismissals submitted by the GTUC, the ITUC, the ESFTUG and the EI in their respective communications. Thus, while noting the information provided by the Government and observing that general provisions prohibiting discrimination exist in the legislation, the Committee underlines that it is essential that the system in place is an effective one. The Committee considers, for example, that options compatible with the Convention would include: a system establishing preventive machinery by requiring that a dismissal is authorized by an independent body or public authority (labour inspectorate or courts); a system which provides for the reinstatement of an unfairly dismissed worker; or a system providing for compensation for the prejudice suffered as a result of an act of anti-union discrimination and sufficiently dissuasive sanctions imposed on employers found guilty of anti-union discrimination, which also act as an effective deterrent to prevent in practice anti-union dismissals.

In the light of the above, the Committee considers that the system currently in place in Georgia does not afford adequate protection. ***The Committee therefore once again requests the Government to take the necessary measures to revise sections 5(8), 37(1)(d) and 38(3) of the Labour Code in consultation with the social partners, so as to ensure that the Labour Code provides for adequate protection of trade union members and trade union leaders against anti-union discrimination taking into account the principles above. It requests the Government to provide information on the measures taken or envisaged in this respect. The Committee further requests the Government to provide its detailed observations on the comments submitted by workers' organizations.***

*Article 2. Interference by employers in internal trade union affairs.* The Committee recalls that it had previously noted various legislative provisions which provide for the protection against interference by employers in trade union affairs. The Committee notes with *concern* numerous allegations of employers' interference in trade union internal affairs, in the private and public sectors, which include prohibition of collection of trade union dues, harassment and pressure exercised on trade union members to leave their respective unions. ***The Committee requests the Government to provide its detailed observations thereon.***

*Article 4. Collective bargaining.* The Committee had previously noted that sections 41–43 of the Labour Code appeared to put in the same position collective agreements concluded with trade union organizations and agreements between an employer and non-unionized workers, including as few as two workers. Considering that direct negotiations between an undertaking and its employees, bypassing representative organizations where these exist, run counter to the principle that negotiations between employers and organizations of workers should be encouraged and promoted, the Committee requested the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees' representatives or discriminatory situations in favour of the non-unionized staff.

The Committee *regrets* that the Government merely reiterates that unionized workers have several privileges over non-unionized workers: for example, an employer is obliged to bargain collectively with a trade union upon the initiative of the latter, but is not obliged to do so with non-unionized workers; trade unions enjoy certain facilities (premises, check-off facilities, etc.), which non-unionized workers do not have; and trade unions are protected in law against acts of interference. The Committee must therefore once again stress that the equal status given in law to collective labour agreements concluded with trade union organizations and agreements concluded with a group of non-unionized workers is difficult to reconcile with the ILO principles on collective bargaining, according to which the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations should be encouraged and promoted with a view to the regulation of terms and conditions of employment by means of collective agreements. If, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers under individual agreements, there is a serious risk that this might undermine the negotiating capacity of the trade union and give rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union. ***The Committee therefore once again requests the Government to take the necessary measures in order to amend the legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees' representatives or discriminatory situations in favour of the non-unionized staff and to promote collective bargaining with trade union organizations. It requests the Government to provide information on all measures taken or envisaged in this regard.***

The Committee recalls that it had also requested the Government to indicate the number of collective agreements concluded in the country and to provide relevant statistics in relation to the private sector. In this respect, it notes the Government's indication that it does not have official statistics regarding the number of collective agreements. The Government points out, however, that according to the 2010 ILO/DIALOGUE study, the collective bargaining coverage

rate in the country is 25.9 per cent. It also refers to a collective agreement concluded in 2010 at a mine factory following a strike.

The Committee notes with **concern** numerous allegations of violations of collective bargaining rights in the country submitted by the abovementioned international and national trade union organizations. It notes, in particular that, according to the information provided by these organizations, employers in the public and private sectors refuse to bargain collectively or to respect those agreements that have been concluded. It further notes the following statistics provided by the GTUC: during 2011, 41 collective agreements were terminated and 32 agreements expired and were not renewed; not a single agreement was signed in the second half of 2011; and between June 2011 and June 2012, only five new collective agreements have been concluded. **The Committee requests the Government to provide its detailed observations on the comments submitted by workers' organizations.**

The Committee recalls that in its previous comments it had noted the steps taken by the Government to institutionalize social dialogue in the country through the establishment of the Tripartite Social Partnership Commission (TSPC), which, among other matters, dealt with the allegations of violations of trade union rights submitted by trade unions. The Committee notes with **concern** the GTUC's allegation that the TSPC remains to be very ineffective and that over two-and-a-half years of its existence, this body has not solved one single issue and not one of its decisions and recommendations has been acted upon. **The Committee requests the Government to provide detailed information on the nature and number of cases examined by the TSPC, as well as on the effect given to its decisions and recommendations.**

The Committee recalls that it had previously noted that a tripartite working group of the TSPC had been established and charged with reviewing and analysing the conformity of the national legislation with the findings and recommendations of the Committee of Experts and to propose the necessary amendments. **The Committee expresses the hope that any proposed amendments will take into account its comments above. It requests the Government to provide information on all progress achieved in this respect.**

## Ghana

### **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:

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011, particularly concerning a 2008 decision of the Accra High Court to the effect that employers could hire and fire without giving any reasons for the termination of employment and that some employers are using this ruling to get rid of unionists. The Committee had also previously noted the comments made by the ITUC in 2009 concerning the persistent refusal of some employers to the unionization of their employees in export processing zones, a current dispute concerning unionization in the export processing zones pending before the National Labour Commission and instances of anti-union discrimination. **The Committee requests the Government to respond to all these comments of the ITUC.**

**Prison staff.** In several of its previous comments, the Committee had requested the Government to take the necessary legislative measures to ensure that prison service staff enjoys the right to organize and bargain collectively. The Committee noted that the Government indicated that the Ghana Prison Service is a state agency classified under the security and intelligence agencies which derived its mandate from the Security and Intelligence Agencies Act, 1996 (Act 526). The Committee further noted that the Government indicated that the concerns raised by the Committee had been communicated to the competent authorities. **Recalling once again that the Convention's guarantees apply to prison service staff, the Committee once again requests the Government to take the necessary measures to amend the Labour Act, so as to ensure that prison service staff expressly enjoy the right to organize and to collective bargaining, and to provide information on any measures taken or contemplated in this regard.**

**Collective bargaining certification.** The Committee had previously noted that sections 99–100 of the Labour Act, 2003, regulate the issue of trade union recognition for collective bargaining purposes by providing that the Chief Labour Officer shall issue, upon request by a trade union, a certificate appointing that trade union as the appropriate representative to conduct negotiations on behalf of the class of workers specified in the collective bargaining certificate. The Committee further noted that under section 99(4), the Chief Labour Officer appeared to have full discretion to decide which trade union to grant recognition to, in situations where more than one trade union existed at the workplace, and that the criteria upon which this decision should be based were not specified. The Committee also noted that the Government indicated that in this situation, the Chief Labour Officer would consult with both trade unions to undertake verification to determine which union is to be issued a bargaining certificate. In these circumstances, the Committee once again recalled that when national legislation provides for a compulsory procedure for recognizing unions as exclusive bargaining agents, certain safeguards should be attached, such as: (a) the certification to be made by an independent body; (b) the representative organization to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; and (d) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed (see the General Survey on freedom of association and collective bargaining, 1994, paragraph 240). **The Committee once again requests the Government to take measures to adopt the appropriate regulations establishing procedures and objective criteria concerning the Chief Labour Officer's competence to determine which union shall hold a collective bargaining certificate, in keeping with the abovementioned principle, and to provide information on developments in this regard.**

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

The Committee notes the comments of the ITUC dated 31 July 2012 concerning anti-union practices.

## Greece

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

The Committee takes note of the Government's report. It further notes the comments by the Greek General Confederation of Labour (GSEE) in a communication dated 16 July 2012 and by the International Trade Union Confederation (ITUC) dated 31 August 2012. The latter comments also concern the arrest and charge of a trade union leader and trade unionists for conducting a sit-in protesting the cut-off of electricity to those not able to pay the corresponding tax increases. *The Committee requests the Government to provide its observations thereon.*

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

*Article 3 of the Convention.* The Committee observes with **concern** from the latest GSEE comments the closure of the Workers' Housing Organization (OEK) and the Workers' Social Fund (OEE). The GSEE maintains that these two organizations were funded by workers' and employers' contributions as set out in the National General Collective Agreement (NGCA) and did not burden the state budget. According to the GSEE, these bodies were crucial to trade union social work and funding workers' housing and further provided indispensable social functions. One of the functions of the OEE was to secure minimum financing for trade unions to support their operating needs. The Committee observes with **concern** the GSEE's comments that this intervention has restricted its autonomy as a trade union organization to determine the management of workers' contributions. *The Committee requests the Government to reply to these observations and in particular to indicate the impact these closures have had on the capacity of the GSEE to carry out its activities.*

In its previous comments, the Committee requested the Government to provide clarification as to whether workers may engage in industrial action despite an arbitral award on wages where the parties are at a deadlock in respect of negotiations on non-wage matters. The Committee notes the information in the Government's latest report that the right to strike is suspended for ten days during arbitration with a view to creating an environment of understanding among the social partners during the process. As the arbitrators' powers are restricted to determining the minimum wage, while the rest of the issues remain open to bargaining, the Government confirms that the suspension concerns only strikes for the determination of the minimum and monthly wage.

As regards the use of civil mobilization orders to curtail industrial action in the maritime sector, the Committee notes the information provided by the Government that this order was made with a view to addressing the most adverse public health effects caused after six consecutive days of strike. The Government stresses that they are not considered in force since the reasons that led to such decisions have ceased to exist. The Government adds that the fact that the Panhellenic Seaman's Federation (PNO) has gone on strike on various occasions from December 2010 to February 2012 without restriction confirms the above.

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

The Committee takes note of the Government's report, as well as the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in a communication dated 16 July 2012 and by the Hellenic Federation of Enterprises and Industries (SEV) dated 16 November 2012. *The Committee requests the Government to provide any observations it may wish to make on these comments.*

In its previous comments, the Committee expressed the firm hope that the Government and the social partners would be able to review all of its comments in the constructive vein in which they were given, with the aim of jointly developing a common platform to advance the country in a manner which fully respected organizational rights and the promotion of free and voluntary collective bargaining responsive to the current urgencies.

The Committee observes from the latest comments of the GSEE that the Greek Parliament endorsed, on 12 February 2012, Law No. 4046 on the "Approval of the Plans for Credit Facilitation Agreements between the European Financial Stability Facility (ESF), the Hellenic Republic and the Bank of Greece, the draft Memorandum of Understanding between the Hellenic Republic, the European Commission and the Bank of Greece and other urgent provisions for reduction of public debt and recovery of the national economy". According to the GSEE, the text of the new Memorandum of Economic and Financial Policies sets out the numerous commitments undertaken by the Greek Government including a fresh round of austerity and new permanent measures that further disintegrate fundamental labour rights and industrial relations institutions; these wide-ranging commitments are described as "complete rules of law with direct effect". In addition, the Ministry of Labour and Social Security delivered a Circular (No. 4601/304) concerning the implementation of section 1(6) of Law No. 4046/2012. According to the GSEE, the impact of these measures is devastating for collective labour institutions, freedom of association, social dialogue as well as the principle of independent social partnership. The GSEE considers that these new permanent measures will irreversibly and harmfully compound the effect of standing measures since they demolish almost every aspect of the collective bargaining system; moreover, these measures were



adopted wholly, disregarding the agreement reached by the national social partners on 3 February 2012 to respect the agreed minimum standards of work included in the National General Collective Agreement (NGCA) for the years 2010–12. The GSEE denounces that subsequently, under unprecedented pressure by the troika, the Government undertook to abolish the NGCA itself and has explicitly legislated to decrease the wage rates therein and replace them with a statutory minimum wage after July 2012; as opposed to generating jobs, the sum of the measures taken has given rise to spiralling unemployment, massive lay-offs and widespread precariousness with over-flexible low-paid jobs where women and young people are predominant.

The Government, for its part, stresses its firm commitment to the observance of international labour standards and states that the financial crisis and the international economic environment reduce the quality of labour rights, redefining the concept of core labour rights in an economically developed country, which is required to reduce the quality of life of its citizens. The loan conditions and their association with drastic restructuring of the institutional framework of industrial relations constitute an unprecedented challenge for Greece and the international community, a fact that was highlighted both by the high-level mission and the Committee of Experts. The international organizations that are offering financial aid to rescue the Greek economy have chosen the implementation of measures that will enhance labour market flexibility, as being considered the most appropriate method to enhance the competitiveness of the Greek economy. According to the Government, the measures imposed include a partial restructuring of the free collective bargaining system so that the core of trade union freedom and of collective bargaining might not be affected. The Government adds that the text of programmatic convergence of the three parties that support the newly elected Government provides: “The collective autonomy and the validity of labour collective agreements return to the level defined by the European Social Law and the *acquis communautaire*, according to which the level of wages in the private sector is agreed between the social partners. This also includes the setting up of minimum wage provided for by the NGCA.”

The Committee further notes the new legal framework and context described by the SEV.

The Committee takes note of the conclusions and recommendations made by the Committee on Freedom of Association when examining these same matters in light of their conformity with the principles of freedom of association (Case No. 2820, 365th Report, paragraphs 784–1003). *The Committee similarly encourages the Government and the social partners to rapidly re-engage in intensive social dialogue with a view to developing a comprehensive vision for labour relations in the country and requests the Government to indicate in its next report the steps taken in this regard. The Committee once again urges the creation of a space for the social partners that will enable them to be fully involved in the determination of any further alterations within the framework of the agreements with the EC, the International Monetary Fund (IMF) and the European Central Bank (ECB) that touch upon aspects which go to the heart of labour relations, social dialogue and social peace, and trusts that the views of the social partners will be fully taken into account.*

*Article 4 of the Convention. Violation of the NGCA and other collective agreements.* The GSEE indicates that the Government has legislatively imposed a reduction of the minimum daily/monthly wages established by the NGCA by 22 per cent compared to the level of 1 January 2012. A further reduction was made for young workers (15–25 years old) of 32 per cent. By Circular No. 4601/304, the Ministry of Labour has extended the scope of this reduction to the wages in all collective agreements. According to the GSEE, the Circular also provides that any work performed by workers between 15–18 years of age is excluded from the protective provisions of labour law and is not counted towards seniority. In addition, the minimum daily/monthly wage is subject to a freeze, contrary to raises provided for in the relevant collective agreements, until the rate of unemployment falls below 10 per cent. The clauses of the NGCA related to seniority are further suspended for indefinite duration.

The SEV explains that minimum wages will be regulated by administrative authority as from 1 April 2013, after consultation with the social partners.

While acutely aware of the grave and exceptional circumstances being experienced in the country, the Committee *deeply regrets* these numerous interventions in voluntary concluded agreements, including the NGCA for which the social partners, cognizant of the financial and economic challenges, declared their continuing support in February 2012. The Committee recalls, as has been said to other countries in similar situations, 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 it is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers’ living standards. *While noting the gravity of the economic crisis the Committee refers to its conclusion above about the importance of a space for social dialogue and the role of the social partners in participating in the determination of measures affecting them and the labour market and urges the Government to review with them all the above measures with a view to limiting their impact and their duration and ensuring adequate safeguards to protect workers’ living standards. Noting the Government’s indication that consultations are taking place between the newly elected Government and the social partners with the aim of signing the new NGCA, the Committee requests the Government to indicate in its next report the progress made in this regard and trusts that any mechanism for the determination of wages will ensure that the social partners can play an active role.*

*As regards its previous comments concerning collective agreements in the banking sector on supplementary pension funds raised by the Greek Federation of Bank Employee Unions (OTOE), the Committee once again requests*

*the Government to indicate the steps taken to bring the parties together with a view to achieving a mutually acceptable agreement.*

As regards the GSEE reference to the Government's enforcement of a maximum duration of three years for collective agreements and the mandatory expiry of collective agreements (those already in place over 24 months shall have a residual duration of one year), the Committee does not consider that imposing a three year maximum duration on collective agreements constitutes a violation of the Convention, if the parties are free to agree on a different duration.

*Binding nature of collective agreements and association of persons.* The Committee recalls its previous comments concerning Act No. 3845/2010 which provided that: "Professional and enterprise collective agreements' clauses can (from now on) deviate from the relevant clauses of sectoral and general national agreements, as well as sectoral collective agreements' clauses can deviate from the relevant clauses of national general collective agreements. All relevant details for the application of this provision can be defined by Ministerial Decision." In its previous comments, the GSEE raised its deep concern that this provision paved the way for the dismantling of a solid machinery of collective bargaining which had been functioning smoothly and effectively in the country for 20 years as a result of a "Social Pact" endorsed in 1990.

As regards the matter of the association of persons, the Committee notes the information in the Government's latest report that Act No. 4024/2011 provides that, where there is no trade union in the company, an association of persons is competent to conclude a firm-level collective agreement. The Government adds that the association of persons is established irrespective of the total number of workers and without an indefinite duration. The Government confirms that at least three-fifths of the workers of the enterprise are required for forming an association of persons and thus the minimum number of workers for an association is five. These workers are protected against anti-union dismissal and may exercise strike action; they therefore constitute trade union organizations of a peculiar type. According to the annual report of the labour inspectorate, 22 firm-level agreements were concluded by association of persons and 26 by trade unions from the period 27 October (time of the publication of Act No. 4024) to 31 December 2011. The SEV states that, in its opinion, an association of persons is just another form of trade union organization already recognized by the law and that its role is purely supplementary.

The Committee nevertheless is of the understanding that unions cannot be formed in enterprises with less than 20 workers, thus leaving a void for association of persons to have priority to make firm-level agreements over negotiations which previously took place with respect to small enterprises at the relevant sectoral level. Moreover, the Committee recalls its *concern* that, given the prevalence of small enterprises in the Greek labour market (approximately 90 per cent of the workforce), the facilitation of association of persons combined with the abolition of the favourability principle set out first in Act No. 3845/2010 and given concrete application in Act No. 4024/2011 will have a severely detrimental impact upon the entire foundation of collective bargaining in the country. ***The Committee requests the Government to ensure that trade union sections can be formed in small enterprises in order to guarantee the possibility of collective bargaining through trade union organizations.***

As regards the favourability principle, while observing the indication in the Government's report that the reinforcement of collective bargaining decentralization was included in the measures indicated by the troika including the suspension of this principle, the Committee highlights the importance of the general principle enunciated in Paragraph 3(1) of the Collective Agreements Recommendation, 1951 (No. 91), that collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded. The Committee also observes from the examination of Case No. 2820 by the Committee on Freedom of Association, however, that the Government has affirmed that all collective agreements will be binding upon the parties. ***While recalling the importance in the current situation of ensuring that trade union sections can be established in small enterprises, the Committee requests the Government to ensure full respect for this principle and to continue to provide information on the impact of firm-level agreements, including the number of associations of persons constituted in the country and the number of agreements concluded by them and their coverage, and to indicate whether there have been any first-level agreements in contravention with the abovementioned favourability principle.***

*Arbitration.* As regards the previous concerns raised by the GSEE in relation to the Organization for Mediation and Arbitration (OMED) and recourse to arbitration, the Committee now observes that arbitration can only be carried out at the request of both parties, which is not contrary to the Convention. The Committee further observes from the latest comments of the GSEE, however, that the arbitrator is obliged to adapt the award to the need to reduce unit labour cost by about 15 per cent during the programme period and that all the cases pending in arbitration at the time of Law No. 4046/2012 were compulsorily closed/archived. The Committee further observes that both the GSEE and the SEV contest the limitation of the arbitrators' mandate to only wage issues. ***The Committee recalls the importance of efficiently functioning independent and impartial arbitration machinery without government interference and requests the Government to review these restrictions with the social partners so as to ensure that the arbitrators are not given such rigid instructions by law in carrying out their mandate so that they may be able to independently determine the matters voluntarily brought before them. The Committee further requests the Government to reply to the GSEE comments that the closing of the Workers' Social Fund (OEE) will have a negative impact on the OMED as it was one of the main sources of funding for their organization enabling it to preserve its autonomy vis-à-vis the State.***

*Articles 1 and 3 of the Convention. Protection against anti-union dismissal.* More generally, the GSEE has referred to the continuing introduction of measures introducing flexible forms of work which render workers more

vulnerable to abusive practices and unfair dismissal (e.g. flexibility in the management prerogative to breach full-time work contracts and unilateral imposition of reduced-term rotation work, extended duration of permissible use of temporary agency work, increased probationary period and extension of the maximum period for fixed-term contracts). *The Committee once again requests the Government to provide its observations on the comments made by the GSEE in this regard and to provide all relevant information, including comparative statistics relating to complaints of anti-union discrimination and any remedial action taken, with its next report.*

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

The Committee takes note of the Government's report, as well as the comments made by the Greek General Confederation of Labour (GSEE) in a communication dated 16 July 2012. *The Committee requests the Government to provide its observations on the latest comments from the GSEE.*

*Article 5 of the Convention.* The Committee recalls that in its previous observations it had noted the GSEE comments in respect of the austerity measures which it considers violate the aim of the Convention to ensure the promotion of collective bargaining progressively extended to all workers, including those in the public service. The GSEE had referred to: the imposition of a temporary freeze in career advancement premiums; the imposition of a "labour reserve" concealing collective dismissals of thousands of workers in the public and broader public sector without any negotiation; and the imposition of unilateral wage and salary reductions through the establishment of a special solidarity contribution. The Committee now observes that the GSEE refers to further measures taken in the public service, including: further wage cuts and wage ceilings and an intervention in the voluntary nature of collective bargaining in the railways and urban transport sector.

In its previous comments, the Committee requested the Government to indicate the measures taken to ensure the protection of the standards of living of the workers most affected by these interventions. It hoped that the Government and the social partners concerned would be in a position in the near future to fully discuss the time limitations of the measures imposed and to consider any further measures that may need to be taken in relation to the wages of public servants or the imposition of labour reserves in a manner so as to privilege as far as possible the determination of such matters through collective bargaining.

The Committee observes the Government's statement that the content of collective bargaining in the public service is defined by section 3 of Act No. 2738/99 and does not include salaries and the question of a labour reserve. The new grading system in the public service corresponds with the following concrete principles: (a) the principle of fiscal adjustment, the observance of which has become a matter of crucial importance for the economic and political survival of the country in an international environment; (b) the principle of smooth functioning of the administration which is directly associated with the hierarchical classification of the levels of responsibility in the exercise of competences as well as with its performance measurement system; (c) the principle of equality and meritocracy as well as party neutrality, safeguarded through the connection between, on the one hand, the hierarchy according to the employee's grade and wage promotion and, on the other, the employee's typical and essential skills and performance which is assessed on equal terms for every individual, taking into account the graded individual level of responsibility as well as the specific working conditions under which the employees exercise their duties with the aim to achieving the smooth functioning of the service or the body to which they belong; and (d) the principle of ensuring the highest possible standard of employees' performance with a view to serving the public interest. More specifically, the provisions introduce an assessment system based mainly on the objective performance measurement. Furthermore, as regards the allegations of *ipso jure* dismissal, pre-retirement suspension of work and the labour reserve, the Government maintains that these constitute special provisions established under specific fiscal conditions under which the country observes its commitments to lender-partners to reduce public expenditure. According to the Government, the major benefit of these provisions is the fact that immediate organizational, operational and fiscal results are being guaranteed with the aim of achieving the strategic goal of reducing the state, as well as, public expenditure without causing upheaval in the lives of the personnel working in the public administration and the broader public sector.

The Committee notes the conclusions and recommendations by the Committee on Freedom of Association in relation to these same matters. It is equally aware of the grave and exceptional context in which the Government was required to act to observe commitments made to its lender-partners within the framework of the international loan mechanism. Nevertheless, in the spirit of the Convention, the Committee is firmly convinced that the promotion of collective bargaining is a key element in ensuring constructive processes to maximize the impact of crisis responses to the needs of the real economy; even in respect of clauses with economic impact in the framework of sound negotiations which take into account the gravity of the situation. The Committee further considers that engaging in intensive social dialogue is critical to determining in an inclusive manner the measures necessary to limit the impact of these provisions and to provide for adequate safeguards for the protection of workers' living standards. The Committee refers in particular to its chapter on collective bargaining in times of crisis in its General Survey on Conventions Nos 151 and 154 in this regard in both the public and the private sectors. In this regard, the Committee stresses the relevance of an extraordinary mechanism for enabling social partners to reach conclusions on steps to be taken in times of crisis.

*The Committee requests the Government to provide detailed information in its next report on the measures taken to review the abovementioned provisions with the social partners with a view to limiting their impact and providing adequate safeguards for the protection of workers' living standards.*

## Guatemala

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

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 31 July 2012, referring to matters already under examination by the Committee, and particularly the murder of seven trade union leaders and two trade union members between January and October 2011. The Committee also notes the comments on the application of the Convention made by the Trade Union Confederation of Guatemala (UNSI TRAGUA), the General Confederation of Workers of Guatemala (CGTG) and the Trade Unions' Unity of Guatemala (CUSG), dated 30 August 2012, which refer in particular to numerous allegations of violations of trade union rights in practice, in both the private and public sectors, and to acts of violence against trade unionists, including the murder of a trade union leader in August 2012 (the Committee observes that some of the allegations have been submitted to the Committee on Freedom of Association). The Committee also notes the comments of the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) of 31 August 2012 (the MSICG subsequently sent other comments, which were received on 10 September and 3 October 2012, outside the time limits for receiving them) which refer to the murder of a trade union leader in June 2012, allegations concerning acts of violence against leaders of the MSICG, the arrest and the initiation of prosecutions against trade union leaders in a context of the criminalization of the exercise of trade union rights and the policy to weaken the Ministry of Labour and the labour inspectorate. The MSICG also alleges numerous violations of trade union rights in practice, in the public and private sectors, including in *maquilas* (export processing zones) and industrial free zones. ***The Committee requests the Government to refer the matters raised by these organizations to the National Tripartite Commission and to provide information in this respect, particularly on the decisions taken.***

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

#### *Complaint under article 26 of the ILO Constitution*

The Committee notes that a group of Workers' delegates to the 101st Session of the International Labour Conference submitted a complaint in June 2012 under article 26 of the ILO Constitution against the Government of Guatemala for failure to comply with the Convention.

The Committee notes the Government's indication that the President of the Republic and the authorities have observed with great concern the claim made by the workers, which is based on events that have been occurring for approximately the last 25 years. It adds that the current Government, which took office in January 2012, has adopted measures and taken firm action for transformation and change in the management of labour matters, and in this context has invited the Director-General of the ILO and the Director of the International Labour Standards Department to visit the country and support the efforts that are being made by the new Government for the implementation of the Convention. The Committee notes the Government's indication that during its first months in office it has made progress in the following principal areas: the implementation of the new national policy for safe, decent and quality employment, and the policy for permanent social dialogue; the budgetary, normative and institutional strengthening of the Ministry of Labour and Social Welfare, including the extension of the coverage of the General Labour Inspectorate; the conclusion of an agreement between the Office of the Attorney-General of Guatemala and the International Labour Standards Department of the ILO establishing relations of cooperation and the exchange of information on matters covered by the ILO supervisory bodies; the broadening of national tripartite dialogue, including the trade union federations and confederations which have been excluded in the recent past, with as its first result the conclusion of the Memorandum of Understanding for the cooperation framework with the ILO, the Decent Work Programme and the Framework Implementation Plan; and coordination between state institutions to give priority to complaints concerning acts of violence against trade unionists and impunity which, unfortunately, also affect the population as a whole.

#### *Acts of violence against trade unionists and the situation of impunity*

The Committee recalls that for several years it has been noting in its observations serious acts of violence against trade unionists which have gone unpunished and has requested the Government to provide information on developments in this regard. The Committee notes that in its comments the ITUC, in the same way as the national trade union confederations, continue to highlight serious acts of violence against trade union leaders and members in recent years, including in 2011 and 2012, and describe a climate of fear and intimidation with a view to dismantle existing trade unions and preventing the establishment of new ones. The organizations also emphasize the deficiencies of the labour inspection services and the crisis in the judicial system. The Committee has noted that in recent years many acts of violence have been committed against trade union leaders and members, including murders, death threats and acts of intimidation against

trade union members. The Committee observes that the Committee on Freedom of Association (in Cases Nos 2445, 2540, 2609 and 2768) noted with concern that the allegations levelled in the context of its proceedings were extremely serious and included many murders and acts of violence against trade union leaders and members. The Committee recalls that the high-level mission which visited Guatemala from 9 to 14 May 2011 reported as follows:

The mission wishes to recall that the problems of violence referred to by the CEACR are the following:

- alleged murders of trade union leaders and members over the past five years: 2007: 12; 2008: 12;
- 2009: 16; 2010: 10; and 2011: two up to the month of May (a few days after the mission, a trade union leader of the SITRABI was murdered);
- death threats, abductions, raids, etc., alleged over the past four years:

2008: eight death threats, two attacks against the homes of trade union leaders, a raid against trade union premises and a raid against the home of a trade union leader, and two attempted murders of trade union leaders;

2009: 17 death threats against trade union leaders and executive committees, eight cases of physical assault against trade union leaders and members; an attack against trade union premises and an attack against the home of a trade union leader; and a temporary abduction of a trade union leader; and

2010: four death threats, an attempted murder of a trade union leader, an abduction, involving torture and the rape of a trade union leader, an attack against trade union premises, an attack against the home of a trade union leader, and physical assault against a trade union leader.

The mission emphasized to all those with whom it spoke the gravity of the allegations and the figures referred to above, and recalled during its meetings the relevant principles of the supervisory bodies, and particularly that trade union rights can only be exercised in a climate that is free from violence, and it sought solutions to the matters raised by the Committee. The mission also emphasized that the killing or serious injury of trade union leaders and trade unionists requires the institution of independent and expeditious judicial inquiries in order to shed full light, at the earliest date, on the facts and circumstances in which such actions occurred and in this way, to the extent possible, to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events.

The mission observed that the situation of violence is generalized, affects trade unionists, employers and other categories and results in around 10,000 violent deaths a year (according to data provided by the Presidential Coordinating Commission for Executive Policy in the Field of Human Rights (COPREDEH)) in a country of 11,237,196 inhabitants (according to data provided by the Ministry of Labour). The murder figures for trade union leaders over the past five years show that they are a particularly vulnerable category, although at the present time the most affected sector is that of bus drivers and passengers (on the last day of its work, the mission was able to observe this directly by witnessing an attack with firearms on a bus in which five persons died). The mission was informed by various sources that the main perpetrators of acts of violence are related to common crime, organized crime and, recently, drug trafficking, a crime that has been spreading particularly rapidly in recent years in Guatemala and other Central American countries. The mission was able to observe that a large number of people in the country carry weapons. The trade union confederations and the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) emphasized the weakness of the security services and the judicial system, their concern at the level of violence and their desire to contribute to the eradication of violence and the restoration of the rule of law. In this context, at the beginning of its work, the mission found that the authorities were only in a position to provide information on investigations concerning a small number of the trade union leaders and members who had been murdered. In various meetings, including those held with certain magistrates and other authorities, the mission was informed that certain murders might be of an anti-union nature. The mission observed that only once investigations have been conducted and those responsible for carrying out, planning and instigating the acts of violence against trade union leaders and members could their anti-union nature be ascertained, and that for that reason it is urgent to conduct expeditious and exhaustive investigations in all cases. The lack of full and up-to-date information on developments in the investigations concerning trade unionists was a matter of concern for the mission, as was the lack of coordination between State services following up these crimes. For this purpose, the Tripartite Commission on Labour Affairs called for the restoration of the specialized prosecution service for crimes against trade unionists and asked the mission to express its concern to the Office of the Attorney-General in relation to this situation. Sharing these concerns, the mission requested the Public Prosecutor to establish a special prosecution service responsible for investigating these crimes and for an acceleration of the investigations of the 52 murders denounced. The Public Prosecutor appointed a few months ago, with a background in the field of human rights, welcomed these proposals, although the proposal for the restoration of the specialized prosecution service was subject to the outcome of the budget discussions in the Congress. The mission also called on the International Commission against Impunity in Guatemala (CICIG) to collaborate with the Office of the Public Prosecutor to investigate and shed light on these cases. The mission is pleased to note that it received an affirmative response from both parties and the undertaking to carry out these investigations. The mission indicated to the authorities the importance that these investigations were undertaken taking duly into account the alleged anti-union nature of the cases, as in recent years there has been a certain tendency in investigations to give priority to other motives, and particularly those based on “passion”. The Public Prosecutor expressed great interest in the possibility of concluding a cooperation agreement with the ILO, which would include activities to provide training to prosecutors on typical contexts of anti-union violence and the factors which give rise to such violence (the Public Prosecutor will soon contact the ILO for this purpose). The mission also suggested that representatives of the Office of the Attorney-General should participate regularly in the meetings of the Tripartite Commission on Labour Affairs with a view to providing information on progress in the investigation of cases of murders of trade union leaders and members. The Office of the Attorney-General and the Tripartite Commission on Labour Affairs welcomed the proposal. The mission noted the urgent call by society, including employers’ and workers’ organizations, to address more decisively the impunity and corruption existing in the country and considers that the authorities need to devote much higher levels of resources and take effective measures to eradicate the corruption that permeates the administration of justice. At present, the impunity rate is 98 per cent, according to official sources. The CACIF and the trade unions agree on the need for criminal and labour court procedures concerning anti-union practices to be expeditious and effective.

The Committee also notes with *deep concern* that, according to the ITUC and the trade union confederations, since the visit by the mission murders have continued in 2011 and 2012.

The Committee notes the Government’s indication in a communication addressed to the Committee on Freedom of Association and in its report to the Committee of Experts that: (1) the Office of the Attorney-General, in compliance with

its constitutional mandate to ensure strict compliance with the laws of the country and its functions in relation to criminal prosecution, has been a member this year of the working group convened by the Ministry of Labour, together with the judicial authorities and the Ministry of Foreign Affairs, to monitor the application of the Convention; (2) the Office of the Attorney-General also accepted the invitation by the Tripartite Commission on International Labour Affairs, in which representatives of trade unions and representatives of employers participate, and the Ministry of Labour, to provide information on the progress in the cases denounced at the national level and with the ILO; (3) a group of investigators and support staff were recruited with a view, under the direction of the prosecutors responsible for each case, for pushing forward the investigation of the cases so that they can be resolved in a reasonable time and common factors identified in each case; (4) an overall study was undertaken of all the cases to establish whether there existed a common objective of eliminating trade union leaders; (5) the 58 cases under examination are distributed among 25 offices of public prosecutors, with the majority being assigned to the special prosecution service established to investigate crimes against trade unionists; (6) the examination of the cases found that 32 victims could be trade union members or leaders, while in 17 cases there is no documentation or evidence to prove that the persons concerned were members of a trade union, five cases are related to persons connected with municipal markets and four were members of community organizations; (7) in 45 cases, the motive for the murders is related to common crime, in two cases it was found that the death had its origins in the trade union struggles in which the victims were engaged, four died in relation to social claims, five persons perished due to confrontations between municipal authorities and market stallholders, one person died for political reasons and one in the context of the intervention by the state security forces; (8) of the 58 cases, rulings have been handed down or progress is being made in 24; (9) as a demonstration of the will of the Government and the Office of the Attorney-General, on 10 July a protocol agreement was concluded between the Office of the Attorney-General of Guatemala and the International Labour Standards Department of the ILO with the principal objectives of establishing cooperative relations, and a workshop was held on international labour standards, with emphasis on freedom of association, collective bargaining and impunity; the workshop was attended by the Sub-secretariat for Political Crime of the Office of the Attorney-General, seven district prosecutors, a branch prosecutor, nine investigators and 15 auxiliary investigators from throughout the Republic; and (10) since the establishment of the special investigation service for crimes against trade unionists, measures have been taken to: (i) receive complaints on the premises of the investigation service; (ii) security measures are granted immediately to trade unionists lodging a complaint of a threat; (iii) in the event of murders of trade union members, extended competence is requested so that these cases can be referred to higher-risk courts; and (iv) in the event of raids on the residences of trade union members or trade union premises, security measures are requested from the Ministry of the Interior around the locations where they are required.

The Committee notes all of this information. The Committee welcomes the Government's indications concerning the re-establishment of the special investigation service for crimes against trade union members. The Committee also welcomes the fact that, further to the conclusions of the high-level mission which visited the country in 2011, a cooperation agreement has been concluded between the Office of the Attorney-General and the ILO and that a first activity for the training of investigators has already been undertaken in relation to the typical context of anti-union violence and the factors giving rise to such violence. The Committee hopes that, in accordance with the cooperation agreement, this type of activity will continue to be carried out. The Committee once again draws the Government's attention to the principle that a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty; freedom of association can only be exercised in conditions in which fundamental human rights, 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 recalls that excessively slow proceedings and the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which aggravates the climate of violence and insecurity, which is extremely damaging to the exercise of trade union rights and incompatible with the requirements of the Convention.

*The Committee once again deplores the murders of trade unionists and other acts of anti-union violence and once again firmly requests the Government to: (1) bring to justice those responsible for the violence in order to counter impunity; (2) ensure the protection of trade unionists under threat of death; (3) convey to the Office of 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 all murders and crimes committed against trade unionists so as to punish the perpetrators; (4) ensure the allocation of sufficient resources for these objectives with the consequent increase in human and material resources, and ensure effective coordination between the various state bodies which may be called upon to intervene in the judicial system, and to provide training for investigators; and (5) as affirmed by the new Government, to give absolute priority to these matters in government policy.*

*The Committee expresses the firm hope that the Government will take all the necessary measures to guarantee full respect for the human rights of trade unionists and that it will continue to provide protection measures to all trade unionists who so request. The Committee firmly hopes that the investigations which, according to the Government, are being carried out by the Office of the Attorney-General, will be finalized in the near future and will result in the determination of those responsible for acts of violence against trade union leaders and members, their prosecution and punishment in accordance with the law. The Committee requests the Government to provide information on any developments in this respect.*

### Legislative problems

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

- restrictions on the freedom to establish organizations (the need, under section 215(c) of the Labour Code, to have 50 per cent plus one of those working in the occupation to establish industry trade unions) and delays in the registration of trade unions, or the refusal to register them. The Committee notes the Government's indication that: (1) this provision is based on article 102(q) of the Political Constitution, which recognizes the right of workers to establish organizations freely; (2) the constitutional and ordinary legislation protect and recognize the freedom to establish organizations and do not restrict the establishment of industry trade unions, and this section sets out clear rules for the establishment of industry trade unions, based on a qualified majority that is sufficiently representative, which ensures legal security and representativity; (3) the reasons set out comply with the need for the negotiation of the collective agreement, and this section guarantees the majority required for the direct negotiation of the collective agreement; (4) there is no discrimination and no requirement for prior authorization for the establishment of an industry trade union, that is to say that the wish of industry groups to associate is not prohibited; (5) the absence of industry trade unions is due to the lack of interest (for example, for economic reasons), and not to legal restrictions; and (6) in light of the above, effect is given to *Article 8* of the Convention. While noting this information, the Committee reiterates that the requirement of a minimum number of members is not in itself incompatible with the Convention, but that the minimum number should be kept within reasonable limits so as not to impede the establishment of organizations. The Committee considers in this respect that the majority required in the above section is too high and could therefore hinder the establishment of an industry-level trade union if the workers decided to establish one;
- restrictions on the right to elect trade union leaders in full freedom (they need to be of Guatemalan origin and to work 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). The Committee takes note of the Government's indication that the legislation is inclusive as it recognizes as being of Guatemalan origin persons originating from the Federation of Central America, for which reason it does not contravene the right to the free choice of trade union leaders, as persons of various nationalities may be elected. While noting that workers who are nationals of the countries of Central America can hold trade union office, the Committee recalls that the national legislation should allow foreign workers, of whatever nationality, to have access to trade union office, at least after a reasonable period of residence in the host country;
- restrictions on the right of workers' organizations to organize their activities freely (under section 241 of the Labour Code, strikes are not declared by the majority of those casting votes, but by a majority of the workers); the possibility to impose 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 purposes 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); and the labour, civil and penal sanctions applicable in the event of 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 noted previously the Government's indication that the Bill had been 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 employment benefits other than wages, and are not covered by social security or by collective bargaining, where it exists. The Committee noted previously 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 case law has not been given effect in practice, according to technical assistance reports and the comments of the MSICG.

In this respect, the Committee recalls the conclusions of the 2011 high-level mission, which are as follows:

The mission regrets to note that no progress has been achieved since the previous year in relation to the legislative reforms requested by the CEACR and that the Tripartite Commission on Labour Affairs has not submitted any draft legislation to Congress. The mission reiterated the importance of bringing the legislation into full conformity with the Conventions on freedom of association. The mission forwarded the comments of the CEACR to the Labour Commission of the Congress. The Labour Commission of the Congress expressed the wish that the Tripartite Commission on Labour Affairs should enter into contact with it regularly to address these matters, and the Tripartite Commission agreed. The mission suggested the possibility to the Labour Commission of the Congress to conclude an agreement with the ILO in relation to training on international labour standards and to improve their application; this proposal was received with great interest and it was indicated that the matter would be submitted in the near future to the competent authorities of the Congress. With regard to the situation of the many workers in the public sector engaged under contracts under items 029 and others of the budget, the mission noted that, according to the Supreme

Court of Justice, the case law recognizes the right of these workers to organize. The mission also noted that in practice these workers join organizations and in certain State institutions represent 70 per cent of the staff. The mission suggested that the authorities, by means of a circular or a resolution, should remove any doubt on the right to organize of workers engaged under contracts under item 029 of the budget. However, the Minister of Labour expressed reservations for economic and legal reasons.

The Committee noted previously that the Government had established an inter-institutional commission to prepare a Bill on the outstanding legislative matters.

The Committee recalls that, in its 2011 conclusions, the Conference Committee expressed the hope that the Government would be in a position to report substantial progress in the very near future. The Committee *regrets* to note that, despite requesting improvements in the legislation for many years, there has not been significant progress in the legislative reforms requested, and it considers that much more effort will need to be made. ***The Committee firmly hopes that, with ILO technical assistance, the Government will be in a position to provide information in its next report on positive developments in relation to the various matters referred to and that tangible progress will be achieved in the near future.***

*Registration of trade unions.* The Committee recalls that in its previous comments it referred to the conclusions of the 2011 high-level mission concerning the obstacles to the registration of trade unions, which read as follows:

The mission emphasized to the Government the need for a rapid solution concerning the registration of the remaining organizations. The mission also suggested the establishment of a proactive registration procedure enabling trade unions with the authorization of their assembly to correct directly in the Ministry legal problems arising during the registration process.

***The Committee once again invites the Government to discuss this matter in the Tripartite Commission with a view to adopting an approach that allows the very rapid resolution with those establishing trade unions of any substantive and formal problems that may arise and facilitates in so far as possible the registration of trade unions.***

#### Other matters

*The maquila sector.* For years, the Committee has been noting the comments of trade unions concerning serious problems in the application of the Convention in relation to trade union rights in the *maquilas*. The Committee recalls that in its previous comments it noted the conclusions of the 2011 high-level mission, which read as follows:

With regard to the situation of trade unions in the *maquila*, the mission noted the indication by the authorities that there are 740 enterprises in the sector, six unions and three collective contracts covering 4,600 workers out of a total of 110,000 workers. The mission notes that the number of workers in the *maquila* has fallen considerably in relation to previous years (around 300,000). The mission also notes the indication by the authorities that it is a sector which has been subject to special attention to verify compliance with labour rights and that there is a special unit of the labour inspectorate that is particularly active in addressing problems in the *maquila*. The mission considers, based on meetings with trade union federations, which are very concerned at the low level of unionization in the *maquila*, that training activities on freedom of association and collective bargaining should be intensified in the *maquila* sector and it encourages the Government to have recourse to ILO technical assistance in this respect.

***The Committee once again requests the Government to continue providing information on the exercise in practice of trade unions rights in maquilas (number of trade unions, their membership, number of collective agreements and their coverage, complaints of violations of trade union rights, decisions taken by the authorities and number of inspections). The Committee expresses the hope that the Government will continue to benefit from ILO technical assistance so that full effect is given to the Convention in the maquilas and it requests the Government to provide information on this subject. The Committee requests the Government to refer problems relating to the exercise of trade union rights in the maquila sector regularly to the National Tripartite Commission and to provide information in this regard.***

*National Tripartite Commission.* In its previous comments, the Committee requested the Government to ensure that the composition of the workers' representation on the Tripartite Commission is based on strict criteria of representativity and it asked the Government to take the necessary measures for that purpose. The Committee welcomes the Government's indication that the trade union federations and confederations that had been excluded recently have now been included.

*Statistics and other matters.* The Committee noted previously that, according to the report of the 2011 ILO high-level mission, it would be useful for the Government to provide clearer statistics confined to trade unions that are in operation, and not those that have ceased to operate, and making a distinction between the public and private sectors, with a view to indicating the level of trade union membership and the coverage of collective bargaining in both sectors. The Committee considers that such data can also be useful in determining the representativity of trade union confederations. ***The Committee once again requests the Government to produce statistics on the unionization rate and the coverage of collective bargaining and on other aspects of trade union activities.***

## Guinea

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

*Observations from workers' organizations.* In its previous observation the Committee asked the Government to send comments on the observations made in 2008 and 2010 by the International Trade Union Confederation (ITUC)



containing serious allegations of assaults by the security forces on demonstrators and strikers, and arrests of trade unionists, the ransacking of the headquarters of the National Confederation of Workers of Guinea (CNTG) and the search by military personnel of the residence of the general secretary of the CNTG.

The Committee notes the Government's indication in its report that: (1) following a transition period (2008–10) and free, transparent and democratic presidential elections, acts of violence, murders and disappearances of trade union leaders are a thing of the past, and fundamental rights at work are scrupulously respected; (2) the Government enjoys excellent collaborative relations with the trade union movement; (3) in its desire to create a climate of lasting peace, the Government has just established a forum for periodic consultation with the social partners, including the CNTG; and (4) this forum has enabled negotiations to be held aimed at improving workers' living conditions and the Government will make every effort to ensure the application in law and in practice of the international standards which it has freely adopted. The Committee further notes the observations of 31 July 2012 from the ITUC, which report the attempted assassination of the newly elected general secretary of the CNTG, death threats received by other leaders and an attack on the confederation's headquarters which resulted in serious injuries to seven persons. 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. Moreover, in the event of assaults on the physical or moral integrity of individuals, an independent judicial enquiry should be instituted without delay since this is a particularly appropriate method for fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. ***The Committee requests the Government to take the necessary steps to ensure observance of these principles.***

*Article 3 of the Convention. Right of organizations to organize their activities and to formulate their programmes.* The Committee's previous comments referred to the need to take steps to set up an independent body having the confidence of the parties, in order to reach a decision without delay on the difficulties encountered in the definition of the minimum service in the event of disagreement between the parties in the transport and communication services. The Committee notes the Government's indication that: (1) to date, no independent body exists for deciding on this matter; (2) by means of Order No. 2732/MEFPRATE/CAB/2010 establishing the structure and operation of the Labour and Social Legislation Advisory Committee, the Government has established a tripartite body whose task is to rule on all questions relating to the world of work; (3) a national body for social dialogue will be established in the very near future; (4) these questions will be placed on the agenda of forthcoming sessions of the Labour and Social Legislation Advisory Committee; and (5) the Government is requesting technical assistance from the Office in this respect. ***The Committee hopes that the technical assistance requested by the Government will be provided in the very near future and requests the Government to supply information in its next report on the work done by the Labour and Social Legislation Advisory Committee on the definition of minimum services in the transport and communication services.***

The Committee's previous comments also referred to the need to take steps to ensure that compulsory arbitration is restricted to cases where both parties agree to request it, in essential services in the strict sense of the term, or in the event of an acute national or local crisis (sections 342, 350 and 351 of the Labour Code). The Committee notes the Government's indication that a draft Labour Code is being prepared and that sections 433(1) and (6) take account of the Committee's comments in this regard. ***The Committee requests the Government to supply information in its next report on the status of the legislative process relating to the new Labour Code and to send a copy of the legislative text once it has been adopted.***

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

*Observations from workers' organizations.* The Committee notes the observations dated 31 July 2012 from the International Trade Union Confederation (ITUC), which are dealt with in the observation relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Article 1 of the Convention. Protection against anti-union discrimination.* In its previous comments the Committee underlined the need to include in the national legislation specific provisions: (1) to protect all workers, and not only trade union delegates, against acts of anti-union discrimination at the time of recruitment and during employment; (2) to provide explicitly for appeal procedures and penalties acting as an adequate deterrent against acts of anti-union discrimination and interference; and (3) to provide for rapid appeal procedures and penalties acting as an adequate deterrent for violations of section 3 of the draft new Labour Code (which provides that no employer may take account of membership of a trade union and trade union activities of workers in making decisions about recruitment, performance and distribution of work, and termination of the employment contract). The Committee notes the Government's statement that these issues were not a subject of discussion during the first session of the Labour and Social Legislation Advisory Committee, but that they might be placed on the agenda during forthcoming sessions and before the next legislative consultations. ***The Committee expresses the strong hope that the Labour and Social Legislation Advisory Committee will deal with these issues in the very near future and requests the Government to provide information on this matter. The Committee also requests the Government to provide information on any developments regarding the establishment of the national body for social dialogue which it mentions in its report relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).***

*Article 2. Protection against acts of interference* In its previous comment the Committee emphasized the need to include in the draft new Labour Code specific provisions on protection against acts of interference in the internal affairs of workers' and employers' organizations, together with efficient and speedy procedures and penalties acting as an adequate deterrent. The Committee notes the Government's statement that section 321(1) and (2) of the draft Code provides for protection against acts of interference. **The Committee requests the Government to provide information on the status of the legislative process concerning the new draft Labour Code – which has been at the preparation stage for many years – and to send a copy once it has been adopted. The Committee hopes that the Government will take the necessary steps to ensure that the new Labour Code is in full conformity with the provisions of the Convention.**

*Social dialogue.* The Committee notes the Government's indication that it has just established a forum for periodic consultation with the social partners, and this has enabled negotiations to be held aimed at improving workers' living conditions. **The Committee requests the Government to supply information on the functioning of this forum for periodic consultation and on any further steps taken to develop social dialogue.**

## Guyana

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

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee notes with *regret* that the Government's report does not reply to the outstanding comments. 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 does not reply to the outstanding comments. 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.**

## Haiti

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1979)**

The Committee takes note of the Government's reply to the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) that referred in particular to acts of violence against demonstrators and the murder of two trade unionists in the transport sector. The Committee notes in particular the indication that one of the trade unionists fell foul of the general climate of insecurity in the country leading up to the elections of 2010 and that the other died following an illness. It also notes the ITUC's new comments of 31 July 2012, some of which concern legislative issues already raised by the Committee.

The Committee has for many years been asking the Government to amend the national legislation, particularly the Labour Code, in order to align it with the provisions of the Convention. In its previous observations the Committee noted that the Government had reported the establishment of a committee to consider the reform of the Labour Code and that in the revision of the Labour Code the Committee's comments would be taken into account and that, to that end, it was receiving technical assistance from the Office. The Committee accordingly expressed the hope that the Government would continue to benefit from the Office's technical assistance so that real progress could be made in revising the legislation to bring it fully into conformity with the Convention. The Committee notes in this connection the technical assistance the country continued to receive in 2012, particularly in the ongoing work to reform the Labour Code. The Committee notes that in its report, the Government reiterates that the social partners have begun to submit their suggestions for the new Code and that it has reason to believe that the reform will address the points raised by the Committee. In previous comments, the Committee made the following points:

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to form and join organizations of their choosing.*

- The need to amend articles 229 and 233 of the Labour Code in order to ensure that minors who have reached the statutory minimum age for admission to employment are allowed to exercise their trade union rights without parental authorization.
- The need to amend section 239 of the Labour Code so as to allow foreign workers to serve as trade union officials, at least after a reasonable period of residence in the country.
- The need to guarantee for domestic workers the rights laid down in the Convention (section 257 of the Labour Code establishes that domestic work is not governed by the Code, and the Act adopted by Parliament in 2009 to amend this provision – which has not yet been promulgated but to which the Government referred in its previous reports – likewise omits the trade union rights of domestic workers).

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes.*

- The need to revise the Labour Code's provisions on compulsory arbitration so as to ensure that recourse to the latter in order to end a collective labour dispute or a strike may be had only in specific circumstances, namely: (1) when the two parties to the dispute so agree; or (2) where a strike may be restricted, or prohibited, namely: (a) in disputes involving officials who exercise authority in the name of the State; (b) in disputes in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to meet the requirements of the situation.

*While aware of the difficulties the country is facing, the Committee trusts that with the technical assistance it is receiving, in particular for the reform of the Labour Code, and with the political will reaffirmed by the Government, the latter will be in a position in its next report to provide information on progress made in revising the national legislation to bring it fully into conformity with the Convention. The Committee requests the Government to provide copies of any new texts adopted.*

Furthermore, the Committee notes with *interest* that a tripartite training course on international labour standards and the ILO supervisory system, was organized by the Office in July 2012 in Port-au-Prince for stakeholders in the garment sector, as a first stage in the process to build capacity in the area of international labour standards in Haiti. The Committee hopes that this process will continue with technical assistance from the Office.

Lastly, concerning its comments on the need to revise section 236 of the Penal Code, under which government consent is required for the establishment of an association of more than 20 members, the Committee notes the information supplied by the Government to the effect that this provision does not apply to trade unions.

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

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

The Committee notes the Government's reply to the observations dated 31 July 2012 from the International Trade Union Confederation (ITUC), which deal in particular with legislative issues already raised by the Committee and with

allegations of anti-union dismissals and obstacles to the exercise of trade union rights, particularly in the export processing zones. The ITUC also raises the issue of the observance of trade union rights of workers in the informal economy. ***Noting that most employment in Haiti is in the informal sector, the Committee requests the Government to indicate the manner in which the application of the Convention to workers in the informal economy is ensured and to clarify, in particular, whether specific measures have been adopted to address the particular difficulties encountered by these workers. The Committee also requests the Government to supply information on the application of the Convention in the export processing zones.***

The Committee recalls that it has been asking the Government for many years to amend the national legislation, particularly the Labour Code, in order to bring it into conformity with the provisions of the Convention. In its previous observations the Committee noted that the Government referred to the establishment of a “think tank” for the reform of the Labour Code, that this reform would take account of the Committee’s comments and that the Government was availing itself of technical assistance from the Office towards this end. The Committee expressed the hope that the Government would continue to avail itself of such assistance in order to enable real progress in the revision of the national legislation in order to bring it into full conformity with the Convention. The Committee notes the technical assistance that the country has continued to receive in 2012, particularly in the context of the work in progress for the reform of the Labour Code.

The Committee recalls that its comments refer principally to:

*Article 1 of the Convention. Adequate protection of workers against acts of anti-union discrimination in respect of their employment.* The Committee recalls that its previous comments concerned the need to adopt a specific provision establishing protection against anti-union discrimination in recruitment practices, and the need to adopt provisions generally affording adequate protection to workers against acts of anti-union discrimination (on the basis of union membership or activity) during employment, accompanied by effective and rapid procedures and penalties acting as an adequate deterrent.

The Committee notes that section 251 of the Labour Code provides that: “any employer who, in order to prevent an employee from joining a trade union, organizing a trade union or exercising his or her rights as a trade union member, dismisses, suspends or demotes the employee or reduces his or her wages, shall be liable to a fine of 1,000 to 3,000 Haitian gourdes (HTG) (approximately US\$25 to US\$75) to be imposed by the labour tribunal, without prejudice to any compensation to which the employee concerned shall be entitled”. The Committee notes that the Government reiterates in its report that the social partners have begun to submit their views with regard to the preparation of the new Labour Code and that the points raised by the Committee regarding protection against anti-union discrimination at the time of recruitment and during employment are due to receive particular attention in the context of the reform in progress. ***The Committee requests the Government to ensure that, in the context of the reform of the Labour Code, the penalties provided for in the event of anti-union discrimination during employment are made more severe, in order to ensure that they act as an adequate deterrent. It also requests the Government to ensure that a specific provision establishing protection against anti-union discrimination at the time of recruitment is adopted.***

*Article 4. Promotion of collective bargaining.* The Committee recalls that its previous comment also concerned the need to amend section 34 of the Decree of 4 November 1983, which empowers the Labour Organizations Branch of the Labour Directorate of the Ministry of Social Affairs and Labour to intervene in the drafting of collective agreements and in collective labour disputes with respect of all matters related to freedom of association. ***Noting the Government’s indication that this matter is due to receive particular attention in the context of the legislative reform in progress, the Committee hopes that the Government will avail itself of the technical assistance provided by the Office in this context to amend section 34 of the Decree of 4 November 1983, in order to ensure that the Labour Organizations Branch can only intervene in collective bargaining at the request of the parties. The Committee requests the Government to send a copy of any amendments adopted to this effect.***

*Right to collective bargaining of public officials and employees.* ***The Committee requests the Government to provide information on the legal provisions relating to this field.***

*Right to collective bargaining in practice.* The Committee appreciates the information to the effect that, further to the tripartite training on international labour standards and the ILO supervisory system organized by the Office in Port-au-Prince in July 2012 for interested parties in the textile manufacturing sector, the participants affirmed the need, in order to continue to strengthen dialogue between the interested parties in this sector, to establish a permanent forum for bipartite dialogue which would meet each month to discuss all ILO-related subjects, and any other subject connected with labour relations. ***The Committee requests the Government to supply information on the activities of this dialogue forum and hopes that this process will be extended to other sectors, with technical assistance from the Office.***

Finally, the Committee notes the Government’s indication that there is just one collective agreement in the country. The Government adds that it is essential that the “think tank” on the reform of the Labour Code takes account of the possibilities of promoting collective bargaining for all categories of workers. ***The Committee requests the Government to provide information on the aforementioned possibilities, and on any further developments in the situation (number of collective agreements concluded, sectors concerned and number of workers covered).***

## Honduras

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

#### *Comments from workers' and employers' organizations*

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee also notes the Government's reply to the comments of 2009 and 2011 from the International Trade Union Confederation (ITUC) referring to legislative issues still pending and to murders and shootings of trade unionists, and the ITUC's new comments of 31 July 2012 alleging an attempt on the life of a trade union leader and the arbitrary detention of trade union officials and members. The Committee notes that the Government provides information on the investigations and court proceedings under way in these cases. The Government also reports that the cases already investigated and referred to the courts pertain to ordinary law offences and are unrelated to trade union activity. While noting that a Public Safety Reform Committee had been created, the Committee emphasizes that a truly free and independent trade union movement can develop only in a climate that is free of violence, pressure or threats of any kind against the leaders and members of these organizations. ***The Committee asks the Government to ensure that this principle is observed.***

The Committee also notes the ITUC's comments on the National Hourly Employment Programme. In this respect, the Committee notes the conclusions and recommendations made in this connection by the Committee on Freedom of Association in Case No. 2899 (see 364th Report, June 2012, paragraphs 568–574).

*Legislative issues.* The Committee recalls that for many years it has referred to the need to amend several provisions of the Labour Code to bring them into line with the Convention. The Committee's comments referred to:

- the exclusion from the scope of the Labour Code, and consequently from the rights and guarantees of the Convention, of workers in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (section 2(1) of the Labour Code);
- the prohibition of more than one trade union in a single enterprise, institution or establishment (section 472 of the Labour Code);
- the requirement of more than 30 workers to establish a trade union (section 475 of the Labour Code);
- the requirement that the officers of a trade union, federation or confederation must be of Honduran nationality (sections 510(a) and 541(a) of the Labour Code), be engaged in the corresponding activity (sections 510(c) and 541(c) of the Labour Code), and be able to read and write (sections 510(d) and 541(d) of the Labour Code);
- the ban on strikes being called by federations and confederations (section 537 of the Labour Code); the requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike (sections 495 and 563 of the Labour Code); the authority of the Ministry of Labour and Social Security to end disputes in oil production, refining, transport and distribution services (section 555(2) of the Labour Code); the need for government authorization or a six-month period of notice for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State (section 558 of the Labour Code); the referral to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), of collective disputes in public services that are not essential 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 (sections 554(2) and (7), 820 and 826 of the Labour Code).

The Committee notes that, in referring to these issues, the Government states that there have been no proposals to amend the legislative provisions in question. The Committee observes that the Government no longer refers to the draft reform of the Labour Code that included several amendments requested by the Committee. Nonetheless, the Committee notes the Government's statement that the country is firmly committed to reforming the labour legislation. The Government adds that, pending the support requested of the International Labour Office, it will take measures with a view to harmonizing the labour legislation with ratified Conventions and that for this purpose a technical committee is working on draft decrees that will implement this high-ranking objective. The Government also indicates that the employers' and workers' sectors will be invited so as to ensure that these drafts, when submitted for tripartite scrutiny in the Social and Economic Council, following awareness-raising action, achieve the expected consensus. Furthermore, the Committee notes that, according to the Government, a comprehensive national programme with an immediate action plan on standards and fundamental rights at work in Honduras is to be proposed. The Government states that its efforts will be backed up with technical assistance from the ILO. ***The Committee hopes that all the initiatives referred to by the Government will enable the legislation to be brought into line with the requirements of the Convention. The Committee expresses the firm hope that, with technical assistance from the Office, and in full consultation with the social partners, the Government will take all necessary steps to align the Labour Code with the Convention. The Committee***

*trusts that, in that process, all the issues it has raised will be taken into account. It asks the Government to provide information on any measures adopted in this regard in its next report.*

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

#### **Comments from workers' and employers' organizations**

The Committee notes the Government's reply to the comments of 31 July 2009, 2011 and 2012 from the International Trade Union Confederation (ITUC) referring to pending legislative matters and to: (1) The framing of a bill which could result in collective bargaining being authorized only for unions that represent more than 50 per cent of all employees in the enterprise. In this regard, the Government indicates that there is no record of such a bill having been submitted to parliament. (2) The creation of parallel unions by employers. The Government indicates in this regard that the competent bodies have received no formal complaints about the establishment of such organizations. (3) Anti-union practices in the export processing zones and various enterprises in the cement and bakery sectors, slow proceedings dealing with complaints of anti-union practices and non-compliance with court orders to reinstate trade unionists. The Government states in this regard that, through the Ministry of Labour and Social Security, it will seek to have these items put on the Economic and Social Council's agenda. (4) Cases of anti-union dismissals. In this respect, the Government indicates that investigations are under way in the course of the General Labour Inspectorate's work, and that court proceedings have been initiated, and in one case a trade unionist was reinstated.

*Legislative matters. Articles 1 and 2 of the Convention. Protection from acts of discrimination and interference.* The Committee recalls that for many years it has referred in its comments to:

- The lack of adequate protection against acts of anti-union discrimination, since the penalties provided for in section 469 of the Labour Code for persons who interfere with the right to freedom of association range from 200 to 10,000 lempiras (200 lempiras being roughly equivalent to US\$12) are obviously insufficient and a mere token. The Committee notes that in its report, the Government reiterates that protection against any act of discrimination that undermines freedom of association in the sphere of employment is guaranteed by the provisions of: (1) article 128(14) of the Constitution of the Republic, which confers the right to freedom of association on employers and workers alike; (2) section 517 of the Labour Code, which grants special state protection to workers when they notify to their employers their intention of forming a union and which provides that, from the date of such notification until receipt of the notice of legal personality, none of the notifying workers may be dismissed or transferred or suffer any impairment of their working conditions without due cause, as defined previously by the competent authority; and (3) the provisions of the Code that impose the penalties indicated by the Committee. ***The Committee again asks the Government, in consultation with the social partners, to take the necessary steps to amend the penalties established in section 469 of the Labour Code so as to make them dissuasive.*** The Committee further recalls that in its previous observation, it asked the Government to indicate specific cases in which section 321 of Decree No. 191-96 of 31 October 1996 (establishing penal sanctions for discrimination) has been used to apply sanctions for acts of anti-union discrimination. The Committee notes that according to the Government, the Ministry of Labour and Social Security sought information on the matter from the Office of the General Prosecutor of the Republic and is awaiting a reply in order to report back to the Committee. ***The Committee hopes that the Government will provide this information in its next report.***
- The absence of full and appropriate protection against all acts of interference, and sufficiently effective and dissuasive penalties against such acts. The Committee notes that the Government reiterates that the legislation does contain provisions to afford workers' organizations adequate protection against all acts of interference by employers, a case in point being section 511 of the Labour Code, which bars from membership of executive committees of enterprise unions or first-level unions or from appointment to trade union office members who, on account of their duties in the enterprise, represent the employer or hold management posts or positions of trust or who are able easily to exercise undue pressure on their colleagues. The Committee recalls in this connection that the protection of *Article 2* of the Convention is broader than that afforded by section 511 of the Labour Code and that in order to ensure that effect is given to *Article 2* of the Convention in practice, the legislation must make express provision for sufficiently dissuasive remedies and sanctions against acts of interference by employers against workers and their organizations, including against measures that are intended 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 objective of placing such organizations under the control of employers or employers' organizations. ***The Committee again requests the Government, in consultation with the social partners, to take the necessary steps to these ends.***

*Article 6. Right of public servants not engaged in the administration of the State to bargain collectively.* In its previous comments the Committee pointed out that, although *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from the Convention's coverage, other categories of workers must be able to enjoy the guarantees laid down in the Convention and thus bargain collectively for their conditions of employment,

including pay. The Committee asked the Government to take the necessary steps to amend sections 534 and 536 of the Labour Code barring unions of public employees from submitting lists of claims or signing collective agreements. The Committee notes with *regret* that the Government has sent no information on this matter. ***The Committee again asks the Government to take the necessary measures to amend the legislation to take account to the abovementioned principle.***

The Committee notes that the Government states that it will take steps to align the labour legislation with ratified Conventions, in the framework of the Economic and Social Council, with support from the ILO. ***The Committee trusts that all the issues it has highlighted will be taken into account, and asks the Government to provide information on any measures adopted in its next report.***

***[The Government is asked to supply full particulars to the Conference at its 102nd Session and to reply in detail to the present comments in 2013.]***

## Hungary

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

The Committee notes the Government's report, including the information provided concerning Act No. LXXIII of 2009 on the National Council for the Reconciliation of Interests and Act No. LXXIV of 2009 on the Sectoral Dialogue Committees and certain issues of medium-level social dialogue, as well as the statistical data concerning the number and coverage of recently concluded collective agreements. It also notes the Government's observations on the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011.

The Committee notes the comments of the ITUC dated 31 July 2012 on the application of the Convention. ***It requests the Government to provide its observations thereon.***

The Committee also notes the adoption on 13 December 2011 of Act I of 2012 enacting the Labour Code.

*Article 1 of the Convention. Anti-union discrimination.* The Committee previously noted the Office's comments on the draft labour law, in particular on the need to provide for rapid appeal procedures and dissuasive sanctions in case of acts of anti-union discrimination. With respect to trade union officials, the Committee notes that: (i) section 273 of the new Labour Code provides for the protection of a limited number of union officials against acts of anti-union discrimination in the form of termination or transfer by requiring the prior consent of the higher trade union body; (ii) section 83 grants reinstatement in case of dismissals violating the requirement for prior consent of the union's higher body before terminating a trade union official; (iii) section 82 provides compensation not exceeding the worker's 12-month absence pay in case of unlawful dismissals of trade union officials; (iv) it is unclear whether the new Labour Code stipulates penalties for acts of anti-union discrimination against trade union officials; and (v) the 1996 Labour Inspection Act was amended to cover compliance with rules related to employment protection of employees in an elected trade union position, and levying a fine is mandatory if an employer has failed to grant the protection envisaged in the Labour Code to such employees. As regards trade union affiliates, the Committee notes that: (i) section 271 of the new Labour Code generally prohibits termination or discrimination of employees on the grounds of their trade union affiliation or activity, both at the time of taking up employment and in the course of employment; (ii) in case of unlawful dismissals of trade union members, section 82 provides compensation not exceeding the worker's 12-month absence pay; (iii) it is unclear whether the new Labour Code stipulates sanctions for acts of anti-union discrimination against trade union affiliates; and (iv) the Labour Inspection Act establishes particularly severe sanctions for repeated offences violating the rights of several employees. ***The Committee requests the Government to provide information concerning the amount of fines and information or other penalties that can be imposed by labour inspection in cases of acts of anti-union discrimination against trade union officials or trade union affiliates.***

Moreover, concerning the effective protection in practice against anti-union dismissals and other acts of anti-union discrimination, the Committee notes that: (i) the Government provides information concerning the proceedings instituted by the Equal Treatment Authority; (ii) the ITUC referred in 2011 to a number of alleged specific acts of anti-union discrimination; and (iii) in the framework of Case No. 2775, the Committee on Freedom of Association has examined numerous allegations of this nature as well as alleged delays in the related proceedings. ***The Committee invites the Government to initiate a forum of dialogue with the most representative workers' and employers' organizations with regard to the functioning and length of the existing proceedings related to anti-union discrimination.***

*Article 2. Acts of interference.* In its previous comments, the Committee requested the Government to indicate the measures taken or contemplated so as to adopt specific legislative provisions prohibiting acts of anti-union interference. The Committee notes that the Government once again indicates in its report that it considers that the Constitution, the Labour Code, the Act on the Right to Association along with section 15 of the Public Finance Act and the severe sanctions envisaged in the Labour Inspection Act for repeated offences violating the rights of several employees are sufficient to prevent acts of interference. The Committee also notes that, according to section 271(4) of the new Labour Code, any entitlement or benefit may not be rendered contingent upon affiliation or lack of affiliation to a trade union. In this respect, the Committee recalls that the specific forms of acts of interference likely to impair the guarantees established by the Convention are very varied in nature. The Committee observes that the provisions in force do not seem to cover all forms

of anti-union interference. It highlights the necessity to adopt protective provisions against all 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. The Committee is also of the view that legislation should make express provision for rapid appeal procedures, coupled with effective and sufficiently dissuasive sanctions against acts of interference in order to guarantee the application in practice of *Article 2* of the Convention (see 1994 General Survey on freedom of association and collective bargaining, paragraphs 231–232). ***The Committee requests the Government to adopt specific legislative provisions prohibiting all acts of anti-union interference on the part of the employer. It further requests the Government to provide information on the sanctions imposed in law and in practice in case of acts of anti-union interference.***

*Article 4. Representativeness for the conclusion of collective agreements.* The Committee previously requested the Government to indicate in its next report any measures taken or contemplated so as to lower the 65 per cent requirement set out in the Labour Code, as well as 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. The Committee notes the Government's indication that trade unions will no longer need to represent 65 per cent of the workforce in order to be able to engage in collective bargaining. The Committee notes with *satisfaction* that, according to section 276(2) of the newly adopted Labour Code, trade unions shall be entitled to conclude collective agreements if the number of their members reaches 10 per cent: (i) of all workers employed by the employers; or (ii) of the number of workers covered by the collective agreement concluded by the employers' interest group; and that two or more trade unions may join to reach the required percentage. ***Noting also the statistical data provided by the Government regarding collective bargaining, the Committee invites the Government to provide further details with respect to the sectors and the total number of workers covered by collective agreements.***

## Indonesia

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1998)***

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee also notes the response of the Government to the comments made by the International Trade Union Confederation (ITUC) in 2011. However, the Government does not respond to certain allegations, in particular those relating to violence against striking workers and acts of intimidation against union leaders. The Committee further notes that, in its response to new comments made by the ITUC in a communication dated 31 July 2012, which relate to a number of matters already raised by the Committee, as well as violations of the Convention, the Government also fails to respond to serious allegations relating to excessive violence and arrests in relation to demonstrations and police involvement in strike situations, including in one case of recourse to firing that led to the death of two strikers. The Committee notes that the Government only reiterates in connection with the police role in strikes that it has been regulated in Kapolri Regulation No. 1/2005 (Guidelines on the conduct of the Indonesian Police to ensure law enforcement and order in industrial disputes). ***The Committee requests the Government to provide its observations on the abovementioned allegations. It further requests it to take all necessary measures to ensure that the use of excessive violence in trying to control demonstrations is avoided, that arrests are made only where serious violence or other criminal acts have been committed, and that the police are called in a strike situation only where there is a genuine and imminent threat to public order.***

*Trade union rights and civil liberties.* In its previous comments, the Committee requested the Government to take the necessary measures to repeal or amend sections 160 and 335 of the Penal Code, respectively on "instigation" and "unpleasant acts", so as to ensure that these provisions cannot be used abusively as a pretext for the arbitrary arrest and detention of trade unionists. The Committee notes that the Government indicates in its report that progress on the amendment of the Code is still under discussion between ministries. ***The Committee reiterates its hope that, in the framework of the review of the Penal Code, sections 160 and 335 will be repealed or amended, and requests the Government to provide information on the developments in this regard.***

*Article 2 of the Convention. Right to organize of civil servants.* In its previous comments, the Committee expressed the hope that the Government will adopt an act guaranteeing the exercise of the right to organize to civil servants, pursuant to section 4 of Act No. 21 of 2000, which proclaims that civil servants shall enjoy freedom of association and that the implementation of this right shall be regulated in a separate act, so as to bring the legislation into full conformity with the Convention. The Committee notes that the Government reiterates that there is no prohibition for civil servants to form unions and that the absence of specific legislation on the right to organize of civil servants is the result of the fact that political will from all parties is still needed. ***In this context, the Committee requests the Government to indicate in its next report any development in this regard.***

*Right to organize of employers.* In its previous comments, the Committee requested the Government to specify whether employers' organizations could be established independently of the Indonesian Chamber of Commerce and



Industry (KADIN). The Committee notes that the Government reiterates that the Indonesian Employers' Association (APINDO), which is affiliated to KADIN, is an independent employers' organization. The Committee notes that the Government adds that there is no restriction in Act No. 1/1987 creating KADIN to the possibility of forming other employers' organizations.

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes.* In its previous comments, the Committee made a number of requests to the Government in relation to the conditions for the exercise of the right to strike, in particular in relation to: the conditions for the determination of failed negotiations (section 4 of Ministerial Decree No. KEP.232/MEN/2003); the conditions for the issuance of back-to-work orders (section 6(2) and (3) of Ministerial Decree No. KEP.232/MEN/2003); the extensive time period accorded to mediation/conciliation procedures (Industrial Relations Dispute Settlement Act No. 2 of 2004); and the imposition of criminal conviction for violation of certain provisions in relation to the right to strike (section 186 of the Manpower Act). The Committee notes that the Government indicates in its report that a review of Ministerial Decree No. KEP.232/MEN/2003 (concerning section 4, the Government indicates that, in practice, the determination of failed negotiations is left to the parties) and of Act No. 2 of 2004 is under way, in consultation with the relevant stakeholders. It also notes that the Government indicates, in relation to section 186 of the Manpower Act, that it has not yet considered amending it. The Committee expresses the firm hope that, in the context of the review of the legislation, its previous comments will be taken into account so as to bring the legislation into conformity with the principles of freedom of association. ***It requests the Government to provide information in its next report on steps taken in this regard.***

*Article 4. Dissolution and suspension of organizations by administrative authority.* In its previous comments, the Committee had noted that if trade union officials violate either section 21 or 31 of Trade Union/Labour Union Act No. 21 of 2000 – by either failing to inform the Government of any changes in the union's constitution or by-laws within 30 days or failing to report any financial assistance coming from overseas sources – serious sanctions can be imposed under section 42 of the Trade Union/Labour Union Act, namely, the revocation and loss of trade union rights or suspension. Considering that such sanctions are disproportionate, the Committee requested the Government to indicate the measures taken or contemplated so as to repeal the reference to sections 21 and 31 in section 42 of the Trade Union/Labour Union Act. The Committee also requested the Government to indicate the measures taken or contemplated so as to ensure that organizations affected by measures of dissolution or suspension by the administrative authority have a right of appeal to an independent and impartial judicial body, and that such administrative decisions do not take effect until that body issues a final decision. ***Noting that the Government reiterates that it is conducting a review of Trade Union/Labour Union Act No. 21 of 2000, the Committee expresses the hope that, in the framework of this review, the Government will fully take into account the Committee's comments. It requests the Government to provide information on developments in this regard.***

The Committee reminds the Government that if it so wishes it may take advantage of technical assistance from the International Labour Office in relation to the issues raised in these comments.

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

## Iraq

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 31 July 2012, denouncing the persistence of violence against trade unionists in the journalism, printing and textile sectors, and acts of interference in the internal affairs of the General Federation of Iraqi Workers (GFIW). The Committee recalls that it noted previously the ITUC's allegations that an order issued by the Ministry of Electricity in July 2011 had prohibited trade union activities by the Electricity Workers' Union, closed all its offices and taken control of its assets and property. The Committee wishes once again to recall the interdependence between civil liberties and trade union rights, and to emphasize that a genuinely free and independent trade union movement can only develop in a climate of respect for fundamental human rights and that the exercise of freedom of association is not possible in a climate of violence, pressure, fear and threats. ***The Committee once again expresses the firm hope that it will be possible in the near future for trade union rights and the right to collective bargaining to be exercised normally and in accordance with fundamental rights, in a climate free from violence, duress, fear and any kind of threat. The Committee also requests the Government to provide its observations in reply to the serious allegations made by the ITUC.***

The Committee recalls that for many years the Government has been engaged in a process of the adoption of a new Labour Code, with a view to giving effect to ratified Conventions, including those on freedom of association and the recognition of the right to collective bargaining. In this respect, the Committee recalls that in recent years its comments have focused on the provisions of the draft Labour Code respecting protection against acts of anti-union discrimination and interference, and the promotion of collective bargaining. The Committee however observed in its previous observation that all the provisions respecting trade unions were removed from the draft Labour Code with a view to their eventual inclusion in a special law on trade unions. The Committee notes the Government's indication that the Labour Code is currently being examined by Parliament prior to its adoption. ***The Committee recalls the need to ensure that the***

*legislative process is completed in the very near future so as to ensure the effective implementation of the right to organize and to collective bargaining. It trusts that the Government will report in the near future the adoption of provisions in this respect, whether they are included in the Labour Code or a special law on trade unions, and that these provisions will take duly into account the comments that it has been making for many years on the following points.*

*Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference.* The Committee recalls the need to adopt provisions affording adequate protection against all measures (in relation to recruitment, transfer, demotion, dismissal and other measures with adverse affects) which may constitute acts of anti-union discrimination against trade union members and leaders. These provisions should establish effective and expeditious procedures to ensure their application in practice and be accompanied by sufficiently dissuasive sanctions.

*Article 4. Recognition of trade unions for the purposes of collective bargaining.* While it considers that a system of collective bargaining based on the exclusive bargaining rights of the most representative union is compatible with the principles of freedom of association, the Committee emphasizes that problems may arise where it is established by law 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, since a union that fails to secure this absolute majority would thus be denied the possibility of bargaining. The Committee recalls the need to ensure that if no union, or group of unions, covers more than 50 per cent of the workers, collective bargaining rights should not be denied to the unions in the unit concerned, at least on the behalf of their own members. The Committee hopes that the new legislation will be fully in conformity with this principle.

*Promotion of collective bargaining.* The Committee recalls the need to ensure that the rights set forth in the Convention are fully guaranteed to all workers in the private sector and in the public sector, and in particular in the latter case to officials who are not engaged in the administration of the State. The Committee also recalls that the right to organize, which is a preliminary condition for the development of collective bargaining, is applicable to all public servants, with the sole possible exception of the armed forces and the police.

*Trade union monopoly.* The Committee recalls the need to remove any obstacles to trade union pluralism and recalls in this respect that its previous comments concerned the need to repeal the Trade Union Organization Act No. 52 of 1987 and Government Decision No. 8750 of 2005.

## Kiribati

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

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

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 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 provide information on the 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 US\$100 to US\$1,000 for strikes in essential services and from US\$500 to US\$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 US\$1,000 from US\$100 in case of participation in an unlawful strike and have remained at US\$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 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 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 the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

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

## Liberia

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

#### *Comments from workers' and employers' organizations*

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) dated 31 July 2012 concerning the application of the Convention. *The Committee requests the Government to provide its observations in this respect, as well as on the ITUC's comments of 2008 and 2010 concerning serious acts of violence against strikers and the closure of a trade union radio station.*

*Legal issues.* The Committee recalls that, for many years, it has been commenting on the need to amend or repeal the following provisions of the Labour Practices Law, which are inconsistent with the provisions of the Convention:

- section 4506 prohibiting workers in state enterprises and the public service from establishing trade unions;
- section 4601-A prohibiting agricultural workers from joining industrial workers' organizations; and
- section 4102, subsections 10 and 11, providing for the supervision of trade unions elections by the Labour Practices Review Board.

The Committee recalls that, in its previous comments, it had noted the Government's statement to the effect that a new Labour Code – entitled "Decent Work Bill" (2009) – had been drafted. The Committee notes that, in its report, the Government mentions that: (1) the Decent Work Bill takes account of all the matters raised by the Committee and the reform process is almost complete; (2) measures are under way to submit the Bill to the 53rd National Legislature; (3) a seminar with members of committees entrusted with the work of the Parliament and Senate was foreseen for May 2012; and (4) the legislation guaranteeing civil servants the right to establish trade union organizations (Ordinance on the public service) is being revised. *The Committee hopes that the Decent Work Bill will be adopted in the near future and that it takes account of the comments the Committee has been making for many years. It reminds the Government that it might, if it wishes, avail itself of the Office's technical assistance. The Committee requests the Government to provide information in its next report on any developments in the legislative process, as well as a copy of the text once adopted.*

*Finally, the Committee requests the Government to provide a copy in its next report of the text repealing Decree No. 12 of 30 June 1980 banning strikes.*

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

*Comments from workers' organizations.* The Committee notes the comments submitted by the International Trade Union Confederation (ITUC), contained in a communication dated 31 July 2012, on matters that have been raised in previous observations.

*Legislative issues.* The Committee recalls that it has been making comments for many years on the need to adopt legal provisions guaranteeing:

- adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions;
- adequate protection for workers' organizations against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and
- 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.

The Committee recalls that, in its previous observations, it noted the Government's indication that a new Labour Code – entitled the Decent Work Bill – was being finalized and expressed the hope that this text would take into full consideration the comments it had been making for many years. The Committee notes that, in its report, the Government states that: (1) the Decent Work Bill takes into account all the issues raised by the Committee and the reform process is almost completed; (2) steps are being taken to submit the Bill to the 53rd National Legislature; and (3) the legislation guaranteeing the right to collective bargaining to public servants and employees in state-owned enterprises (Ordinance on the public service) is currently under revision, with the technical assistance of the Office. *The Committee hopes that the Decent Work Bill will be adopted in the near future and that it will take account of the comments it has been making for many years. The Committee hopes that the Government will continue to avail itself of the Office's technical assistance in this respect. The Committee requests the Government to provide information in its next report on any developments in the legislative process and to provide a copy of the text once adopted.*

## Malta

### **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.*

## 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 31 August 2012 which, while raising certain concerns about specific provisions in the recently adopted legislation, observes that there have been a number of welcome and positive developments in the freedom of association situation in Myanmar.

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee observes that, at its 316th Session, the ILO Governing Body decided to take no further action on the complaint under article 26 of the Constitution, which had been pending in relation to the application of this Convention.

*Legislative framework.* In its previous comments, the Committee noted with interest the enactment, by the President, of the Labour Organizations Law and expressed its firm expectation that it would come into force immediately and be applied in practice so as to ensure to all workers in the country the long-awaited legal framework in which they may exercise the rights set out in the Convention. The Committee notes with *satisfaction* that the Labour Organization Law came into force on 9 March 2012 and, from the latest Government communication, there are now 264 basic labour organizations, one labour federation and 12 basic employers' organizations registered under the Law. The Committee further notes with *interest* the enactment of the Settlement of Labour Dispute Law on 28 March 2012 and the issuance of the corresponding Rules on 26 April 2012. The Committee notes with *satisfaction* that the adoption of this law has given rise to the repeal of the 1929 Trade Disputes Act, upon which the Committee has been commenting for many years. The Committee further notes with *interest* the statement in the Government's report that Order No. 2/1988 concerning the prohibition of unlawful assembly and unlawful procession is contrary to article 354 of the Constitution and the recently promulgated Law No. 15 on the right to peaceful assembly and peaceful procession and therefore no longer has the force of law. As regards Order No. 6/1988 relating to the forming of organizations, the Government indicates that, since the entry into force of the Labour Organization Law and Law No. 15, this is only operative with respect to social organizations. The Committee therefore trusts that Order No. 6 will no longer be applicable in any way to workers' and employers' organizations within the meaning of the Convention.

As regards the provisions of the new legislation, the Committee had requested the Government in its previous comments to indicate whether more than one confederation could be formed and recognized under the Labour Organization Law and further requested the Government to indicate the steps taken to amend sections 26 and 40(b) so as to ensure the right of all workers' organizations, including at the basic level, to organize their activities and formulate their programmes in full freedom. The Committee notes with *interest* that a Chief Technical Adviser on freedom of association joined the liaison office in June 2012 and that he has been actively engaged with the Government, workers' and employers' organizations, to raise awareness of freedom of association rights and assist the parties in applying the newly adopted laws in a manner compatible with freedom of association principles. ***The Committee requests the Government to review these provisions with the social partners and the ILO so as to ensure that they are applied in practice in full conformity with the Convention and amended where necessary and to indicate the steps taken in this regard.***

*Civil liberties.* The Committee notes with *satisfaction* the release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, and numerous other persons detained for exercising their basic civil liberties and freedom of association rights. ***The Committee requests the Government to indicate whether Naw Bey Bey and Nyo Win, previously referred to in its comments, have been released.***

The Committee notes the Government's statement that the Unlawful Association Act of 1908 does not hinder workers' freedom of association but rather punishes acts of terrorism. The Committee further notes the concerns expressed by the ITUC in relation to the ambiguous status of Declaration No. 1/2006. ***The Committee trusts that Declaration No. 1/2006 no longer has any legal force, especially in light of the recent return to the country of leaders and members of the Federation of Trade Unions of Burma and requests the Government to confirm this understanding.***

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

## Nigeria

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

#### ***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)***

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee further notes the comments of the International Trade Union Confederation (ITUC) dated 31 July and 31 August 2012 on the application of the Convention, alleging in particular, on 24 October 2011: the storming of a trade union meeting by a combined team of army, police and security services; the physical assault of Osmond Ugwu, Chairperson of the Enugu State Workers Forum; beatings of other trade unionists attending the meeting; the arrest of Mr Ugwu and Mr Raphael Elobuiké, a trade union member; ongoing detention of the trade union leader and the union member until at least end of 2011, on charges for alleged attempted murder of a policeman; and alleged torture and beatings during custody. 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. It also wishes to recall that the arrest and detention, even if only briefly, of trade union leaders and trade unionists, for exercising legitimate activities in relation with their right to organize constitutes a violation of the principles of freedom of association. The Committee further recalls that in cases of alleged torture or ill treatment while in detention, governments should carry out inquiries into complaints of this kind so that appropriate measures, including compensation for damages suffered and the sanctioning of those responsible are taken to ensure that no detainee is subjected to such treatment. ***The Committee requests the Government to provide its observations on these allegations, and to ensure the respect of the abovementioned principles. It also requests the Government to provide its observations on the 2008, 2009 and 2011 ITUC comments.***

The Committee also notes the comments submitted by Education International and the Nigeria Union of Teachers (NUT) on 31 August 2012, according to which employers of teachers in private educational institutions resist the express wish of their employees to belong to the NUT, and teachers in federal educational institutions have been coerced to join the Association of Senior Civil Servants of Nigeria and thus have been denied the right to belong to their professional union. The Committee recalls that teachers should 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 provide its observations thereon.*** *Civil liberties.* In its previous comments, the Committee had noted the Government's indication that eight suspects had been arrested in connection with the assassination of Mr Alhaji Saula Saka, the Lagos Zonal Chairman of the National Union of Road Transport Workers. The Committee had requested the Government to provide information concerning the results of the investigations being carried out and of any judicial proceedings. The Committee notes that the Government again indicates in its report that the assassination of Mr Saula Saka has been carried out as a result of internal squabbles within the trade union, that the police is still investigating the criminal case, and that update on the case will be forwarded as soon as the police report is received. ***The Committee urges the Government to provide the updated information referred to as well as detailed information on the results of the***

*investigations being carried out with respect to the serious allegations of violence against trade unionists. The Committee also urges the Government to provide detailed information on the results of any judicial proceedings in this regard, and, in case of conviction, to ensure that any sentence imposed on the perpetrators is implemented.*

### **Legislative issues**

*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 notes that the Government states in its report that trade union membership is voluntary and tailored along industrial basis. The Committee recalls that under *Article 2* of the Convention, workers have the right to establish and to join organizations of their own choosing without distinction whatsoever, and that it is important for workers to be able to establish a new trade union for reasons of independence, effectiveness or ideological choice. ***It therefore once again requests the Government to amend section 3(2) of the principal Trade Union Act taking into account the aforementioned principles.***

*Organizing in export processing zones (EPZs).* In its previous comments, the Committee had noted the Government's statement that the Federal Ministry of Labour and Productivity was still in discussion with the EPZ authority on the issues of unionization and entry for inspection in the EPZs. The Committee had also noted the ITUC's comments, according to which section 13(1) of the EPZ 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 notes the Government's indication that: (1) the Export Processing Zone Authority is not opposed to trade union activities; (2) part iii of the Federal Ministry of Labour and Productivity Guidelines on Labour Administration and Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector apply to EPZs; and (3) unionization has commenced, e.g. the Amalgamated Union of Public Corporations, Civil Service, and Technical and Recreational Services Employees has started organizing its members there. ***Bearing in mind the commitment to tackle the issue expressed by the Government, the Committee welcomes the information concerning the commencement of unionization in EPZs and requests the Government to transmit a copy of the abovementioned Ministerial Guidelines. It requests the Government to continue to ensure that EPZ workers enjoy the right to establish and join organizations of their own choosing, as provided by the Convention. It further requests the Government to provide information in its next report on the issue of reasonable access to EPZs for representatives of workers' organizations.***

*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 noted 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, would address this issue. The Committee notes that, according to the Government's report, the Collective Labour Relations Bill is still pending before the National Assembly. ***The Committee firmly expects that the Collective Labour Relations Act amending section 11 of the Trade Union Act will be adopted in the near future. It also requests the Government to send a copy of the Collective Labour Relations Act, 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 establish a trade union, considering 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. The Committee had noted the Government's statement that section 3(1)(a) applies to the registration of national unions, and that at the enterprise level, there is no limit to the number of people to establish a trade union. The Committee notes that the Government indicates in its report that the country operates an industry-based system, and that workers in small enterprises form branches of the national union. ***Noting this information, the Committee requests the Government to take measures to amend section 3(1) of the Trade Union Act to clearly indicate that the minimum membership requirement of 50 workers does not apply to the establishment of trade unions at the enterprise level.***

*Article 3. Right of organizations to organize their administration and activities and to formulate programmes without interference from the public authorities. 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 the Government's statement that the Collective Labour Relations Bill that addressed this issue is yet to be passed. ***The Committee once again expresses the firm hope that the Collective Labour Relations Act will fully take into account its comments and will be adopted without delay.***

*Activities and programmes.* The Committee recalls that it had previously commented upon certain restrictions to the exercise of the right to strike (section 30 of the Trade Union Act, as amended by section 6(d) of the Trade Union (Amendment) Act, imposing compulsory arbitration, requiring a majority of all registered union members for calling a



strike, defining “essential services” in an overly broad manner, containing restrictions relating to the objectives of strike action and imposing penal sanctions including imprisonment for illegal strikes; and section 42 of the Trade Union Act, as amended by section 9 of the Trade Union (Amendment) Act, outlawing gatherings or strikes that prevent aircraft from flying or obstruct public highways, institutions or other premises). The Committee notes that the Government indicates that: (1) the right to strike of workers is not inhibited; (2) the Collective Labour Relations Bill has taken care of the issue of essential services; (3) in practice, trade union federations go on strike or protest against the Government’s socio-economic policies without sanctions; and (4) section 42 as amended only aims at guaranteeing the maintenance of public order. The Committee firmly hopes that, in the process of legislative review, all measures will be taken to amend the abovementioned provisions of the Trade Union Act, taking into account the Committee’s comments in regard to these matters (see General Survey of 2012 on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, paragraphs 117 to 161). ***The Committee requests the Government to indicate in its next report the measures taken or envisaged in this respect.***

Furthermore, the Committee 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. The Committee notes that the Government reiterates that the Export Processing Zone Authority is not opposed to union activities and refers to the Guidelines on Labour Administration and Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector. ***The Committee requests the Government to supply a copy of the Guidelines.***

***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 notes that the Government reiterates its earlier position that the issue has been addressed by the Collective Labour Relations Bill which is currently before the National Assembly. ***The Committee once again expresses the firm hope that the Collective Labour Relations Act will be enacted without further delay and adequately address the issue.***

***Articles 5 and 6. Right of organizations to establish federations and confederations and to affiliate with international organizations.*** The Committee had noted that section 8(a)(1)(b) and (g) of the Trade Unions (Amendment) Act 2005 requires federations to consist of 12 or more trade unions in order to be registered and had requested practical information. The Committee notes that, in its report, the Government refers to and supplies a copy of the Trade Unions (International Affiliation) Act of 1996. The Committee notes that, according to section 1(2) of that Act, the application of a trade union for international affiliation shall be submitted to the Minister for approval. The Committee considers that legislation which requires that government permission be obtained for the international affiliation of a trade union is incompatible with the principle of free and voluntary affiliation of trade unions with international organizations. With regard to the requirement in section 8(a)(1)(b) and (g) of the Trade Unions (Amendment) Act 2005 that federations shall consist of 12 or more trade unions, the Committee recalls that the requirement of an excessively high minimum number of trade unions to establish a higher level organization conflicts with ***Article 5. The Committee requests the Government to amend sections 8(a)(1)(b) and (g) of the Trade Unions (Amendment) Act 2005 and section 1 of the 1996 Trade Unions (International Affiliation) Act so as to retain a reasonable minimum number of affiliated trade unions in order not to hinder the establishment of federations, and to ensure that the international affiliation of trade unions does not require government permission.***

***Noting the Government representative’s statement before the Conference Committee on the Application of Standards in 2011 that five Labour Bills had been drafted with the technical assistance of the ILO, the Committee once again expresses the firm hope that appropriate measures will be taken to ensure that the necessary amendments to the laws referred to above are adopted in the very near future 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. Lastly, the Committee once again invites the Government to accept an ILO mission in order to tackle the pending issues.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1960)***

The Committee notes that the comments on the application of the Convention made by the International Trade Union Confederation (ITUC) on 31 July 2012, as well as its comments submitted in 2010 and 2011, refer to specific acts of anti-union discrimination including dismissals, transfers and non-union contract clauses in the banking sector, oil and gas sector and education services; anti-union harassment and interference on the part of the employer in the oil and gas and electricity sectors; and anti-union interference on the part of government authorities in the health and education sectors. The Committee further notes the comments submitted by Education International and the Nigeria Union of Teachers (NUT) on 31 August 2012, referring to the lack of any collective bargaining structure for teachers, non-compliance with the collective agreement concluded between the NUT and the Nigeria Governors’ Forum, and acts of anti-union interference through the promotion by the various state governments of an unregistered union, the Academic Staff Union of Secondary Schools. ***The Committee requests the Government to provide its observations on the***

*comments above, and invites the Government to submit the issues raised in these comments to a forum of tripartite dialogue and report on its outcome.*

In its previous observations, the Committee noted that certain comments submitted by international trade union organizations concerned in particular the fact that: (1) according to the Trade Disputes Act, certain categories of workers are denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Minting Company Limited, the prison services 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 and 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 notes that the Government indicates that: with respect to point (1), the Collective Relations Bill has taken care of the mentioned exemptions from the rights to organize and bargain collectively; as regards point (2), both skilled and unskilled workers are protected in practice against anti-union discrimination; and concerning points (4) and (5), unionization has commenced, e.g. the Amalgamated Union of Public Corporations, Civil Service, and Technical and Recreational Services Employees has started organizing its members within the EPZ. The Committee takes note of this information and refers to its comments made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Concerning point (3), the Committee had previously noted a similar more recent allegation of the ITUC (2009) that private sector collective bargaining rights are restricted by the requirement of government approval for any collective agreements on wages. The Committee notes that the Government indicates in its report that this practice seeks to ensure that there is no undue economic disruption in a particular industry as there is usually a benchmark agreed to by the relevant employers and trade unions. In this regard, the Committee recalls that legal provisions which make collective agreements subject to the approval of the Ministry of Labour for reasons of economic policy, so that employers’ and workers’ organizations are not able to fix wages freely, are not in conformity with *Article 4* of the Convention respecting the promotion and full development of machinery for voluntary collective negotiations. ***The Committee requests the Government to ensure that the relevant provisions are amended to give effect to the principle of free collective bargaining.***

The Committee further notes the Government’s statement that the Collective Labour Relations Bill, which has been elaborated with the technical assistance of the ILO, is still before the National Assembly and will be forwarded when passed. ***The Committee expects that the Collective Labour Relations Act will be in full conformity with the requirements of the Convention. It requests the Government to send the new law once adopted.***

***Lastly, the Committee once again invites the Government to accept an ILO mission in order to tackle the pending issues.***

## **Pakistan**

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

#### ***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)***

*Workers’ and employers’ organizations’ comments.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee further notes the Government’s observation on the 2010 comments submitted by the All Pakistan Federation of United Trade Unions (APFUTU) regarding the difficulties in registering trade unions for the industries established in the City of Sialkot. The Government indicates that, while the management of the two unions concerned went to the Labour Courts and the National Industrial Relations Commission (NIRC) against the registration, the unions lodged cases of unfair labour practices against the management. The cases were decided by the courts in favour of one of the unions, but the members of the union backed down; as for the second union, the establishment was closed due to losses. The Committee notes the comments of the International Trade Union Confederation (ITUC) submitted on 31 July 2012, alleging violence leading to injury and arrests during demonstrations and strikes in the aviation, textile, education and health sectors, as well as dismissals following a strike in the electrical sector. ***The Committee requests the Government to provide comments on the above ITUC comments as well as on the 2011 ITUC allegations.***

*Legislative issues.* The Committee recalls that, in its previous observation, it had noted that the Government had enacted the 18th Amendment to the Constitution, whereby the matters relating to industrial relations and trade unions were

devolved to the provinces. In this respect, the Committee expressed the hope that any new legislation, whether at the provincial or national levels, would be adopted in full consultation with the social partners concerned and that these instruments would be in full conformity with the Convention. The Committee notes that industrial relations acts have been adopted in the Provinces of Balochistan, Khyber-Pakhtoonkhwa, Punjab and Sindh in 2010.

The Committee notes that the Industrial Relations Act (IRA), 2012, which regulates industrial relations and registration of trade unions and federations of trade unions in the Islamabad Capital Territory and in the establishments which cover more than one province (section 1(2) and (3)), replaces the Industrial Relations Ordinance (IRO) of 2011, commented upon by the Committee. It notes with *regret* that most of its previous comments on the Industrial Relations Act, 2008, and on the IRO, 2011, have not been addressed by the IRA, 2012. It further notes that the Balochistan IRA (BIRA), the Khyber-Pakhtoonkhwa IRA (KPIRA), the Punjab IRA (PIRA), and the Sindh Industrial Relations (Revival and Amendment) Act, 2010 (SIRA), all raise similar issues as the IRA, 2012.

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* The Committee notes that the IRA, 2012, excludes the following categories of workers from its scope of application: workers employed in services or installations exclusively connected with the armed forces of Pakistan, including the Factory Ordinance maintained by the federal Government (section 1(3)(a)); workers employed in the administration of the State other than those employed as workmen (section 1(3)(b)); members of the security staff of the Pakistan International Airlines Corporation (PIAC), or drawing wages in a pay group not lower than Group V in the PIAC establishment (section 1(3)(c)); workers employed by the Pakistan Security Printing Corporation or Security Papers Limited (section 1(3)(d)); workers employed by an establishment or institution for the treatment or care of sick, infirm, destitute and mentally unfit persons, excluding those run on a commercial basis (section 1(3)(e)); and workers of charitable organizations (section 1(3) read together with section 2(x) and (xvii)).

The Committee notes that section 1 of the BIRA, KPIRA, PIRA and SIRA further excludes: workers employed in services or installations exclusively connected with or incidental to the armed forces of Pakistan, including the Factory Ordinance maintained by the federal Government; members of the watch and ward, security or fire service staff of an oil refinery or an airport (and seaport – BIRA, KPIRA and SIRA); members of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas; and, in the PIRA and KPIRA only, persons employed in an establishment or institution providing education or emergency services excluding those run on a commercial basis. All exclude persons employed in the administration of the State but include those employed as workmen by the railway and Pakistan Post.

The Committee notes the Government's indication that: (1) the industrial laws are framed by national circumstances and in the light of the space provided by *Article 9* of the Convention; and (2) workers engaged in agriculture have the right to form unions under these enactments. The Committee recalls that, by virtue of *Article 2* of the Convention, workers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing and that the only exceptions authorized to this principle are set out in *Article 9(1)*, which allows States to determine the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police. ***The Committee requests the Government to ensure that it, as well as the governments of the provinces, take the necessary measures in order to ensure that the legislation guarantees the abovementioned categories of employees the right to establish and join organizations of their own choosing to further and defend their social, economic and occupational interests.***

*Managerial employees.* The Committee also notes that, pursuant to sections 31(2) of the IRA and 17(2) of the BIRA, KPIRA PIRA and SIRA, an employer may require that a person, upon his or her appointment or promotion to a managerial position, shall cease to be and shall be disqualified from being a member or an officer of a trade union. The Committee notes the Government's indication that managerial workers can form associations. The Committee notes that the definition of workers in section 2 of the IRA, BIRA, KPIRA, PIRA and SIRA, excludes any person who is employed mainly in a managerial or administrative capacity. ***The Committee therefore requests the Government to indicate, and to request the governments of the provinces to indicate, the legislation under which, in full respect of the Convention, managerial employees may form and join associations.***

*Rights of workers and employers to establish and join organizations of their own choosing.* The Committee notes that sections 8(2)(a) of the IRA and 6(2) of the BIRA, KPIRA, PIRA and SIRA, provide that only trade unions of workers engaged or employed in the same industry may be registered. The Committee notes the Government's indication that there is no bar in the IRA for the establishment of inter-professional organizations or for affiliation by such unions with such federations. The Committee notes that this is the case for the BIRA, KPIRA, PIRA and SIRA as well.

The Committee notes that, under section 3(a) of the IRA, no worker shall be entitled to be a member of more than one trade union. The Committee requested the Government to indicate how workers who have more than one occupation and/or are employed by different establishments can exercise their right to establish and join trade unions of their own choosing for furthering and defending their interests, particularly in the light of the restrictions imposed by sections 8(2)(a) of the IRA, providing that only trade unions of workers engaged or employed in the same industry may be registered. The Committee notes the Government's indication that section 3 strengthens trade unions by imposing restrictions on a worker not to be a member of more than one trade union, as being a member of one trade union makes the worker more committed to his political affiliation/cause and if a worker is a member of two unions in different establishments, or in the same establishments, it may create legal complications. The Committee notes that similar issues

are raised under section 3(a) of the BIRA and the SIRA, and 3(i) of the KPIRA and the PIRA, in the light of the restrictions imposed by sections 6(2)(a) of the BIRA, KPIRA, PIRA and SIRA. The Committee recalls that it is important to allow workers in the private and public sectors who are engaged in more than one job in different occupations or sectors to join the corresponding unions as full members (or at least, if they so wish, to join trade unions at the branch level as well as the enterprise level at the same time). In other words, obliging workers to only join one trade union could unduly prejudice their right to establish and join organizations of their own choosing (General Survey of 2012 on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, paragraph 91). ***The Committee requests the Government to take all measures to amend the legislation taking into account the abovementioned principle. It requests the Government to take the necessary measures to ensure that the governments of the provinces likewise amend the legislation.***

The Committee notes that, pursuant to sections 8(2)(b) of the IRA and 6(2)(b) of the BIRA, KPIRA, PIRA and SIRA, no other trade union is entitled to registration if there are already two or more registered trade unions in the establishment, group of establishments or industry with which that trade union is connected, unless it has, as members, not less than 20 per cent of the workers employed in that establishment, group of establishments or industry. The Committee notes the Government's indication that this was fixed after consultation with the social partners and aims at promoting healthy trade union activities. The Committee considers that it is important for workers to be able to change trade union or to establish a new union for reasons of independence, effectiveness or ideological choice. Consequently, trade union unity imposed directly or indirectly by law is contrary to the Convention (General Survey, op. cit., paragraph 92). ***The Committee requests the Government to ensure that workers may establish organizations of their own choosing and that no distinction as to the minimum membership requirement is made between the first two or more registered trade unions and the newly created unions. It requests the Government to take the necessary measures to ensure that the governments of the provinces likewise amend the legislation.***

The Committee further notes that sections 62(3) of the IRA, 25(3) of the KPIRA and PIRA, and 30(3) of the BIRA and SIRA, provide that, after the certification of a collective bargaining unit, no trade union shall be registered in respect of that unit except for the whole of such a unit. The Committee notes the Government's indication that the collective bargaining unit is determined in consultation with the employer and collective bargaining agents. The Committee considers that, while a provision requiring certification of a collective bargaining agent for a corresponding bargaining unit is not contrary to the Convention, workers' right to establish and join trade union organizations of their own choosing implies the possibility to create – if the workers so choose – more than one organization per bargaining unit. ***Taking into account the abovementioned principle, the Committee requests the Government to take the necessary measures to amend this provision so as to bring it into conformity with the Convention and to take the necessary measures to ensure that the governments of the provinces likewise amend the legislation.***

***Rights and advantages of the most representative trade unions.*** The Committee notes that certain rights are granted (in particular, to represent workers in any proceedings and to check-off facilities) only to collective bargaining agents, i.e. the most representative trade unions (sections 20(b) and (c), 22, 33, 35 and 65(1) of the IRA; sections 24(13)(b) and (c), 32, 41, 42, 68(1) of the BIRA; sections 24(13)(b) and (c), 28, 37, 38, 64(1) of the KPIRA; sections 24(20)(b) and (c), 27, 33, 34, 60(1) of the PIRA; sections 24(13)(b) and (c), 32, 41, 42, 68(1) of the SIRA). The Committee notes the Government's indication that: (1) the right to check-off facilities and the right to call a strike are genuine rights of a collective bargaining agent; (2) all the social partners agreed on these rights during tripartite consultation for drafting of the new law; (3) as far as the issue of the right of representation is concerned, it can be mutually decided between the collective bargaining agent and the opposition. The Committee considers that workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the granting of privileges extending beyond that of priority in representation for such purposes as collective bargaining or consultation by the Government or for the purpose of nominating delegations to international bodies. This distinction should not therefore have the effect of depriving those trade unions that are not recognized as being among the most representative of the essential means of defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances), of organizing their administration and activities, and formulating their programmes, as provided for in the Convention (see General Survey, op. cit., paragraph 97). ***The Committee requests the Government to take the necessary measures to amend the legislation so as to ensure full respect for the abovementioned principles.***

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 had been previously employed in the banking company. The Committee had noted the Government's statement that: (1) a bill to repeal section 27-B of the Banking Companies Ordinance of 1962 had been submitted to the Senate; (2) the federal Cabinet at its meeting held on 1 May 2010 approved the repeal of this provision and that the final legislation was under preparation. The Committee notes that the Government indicates that the matter is under consideration with the Senate. ***The Committee once again expresses the firm hope that the relevant amendment will be adopted in the near future and requests the Government to transmit a copy thereof.***

*Right of workers' organizations to organize their administration and to formulate their programmes.* The Committee notes that sections 5(d) of the IRA, 15(e) of the BIRA, and 15(d) of the KPIRA, PIRA and SIRA, confers on the registrar the power to inspect the accounts and records of a registered trade union, or investigate or hold such inquiry into the affairs of a trade union as he or she deems fit. The Committee notes the Government's indication that the registrar of a trade union is a public functionary who works for the smooth functioning of trade unions and who does not indulge in internal administration of the organizations during financial audit and scrutiny of annual returns. The Committee considers that supervision of the finances of a trade union is compatible with the Convention when: (1) it is limited to the obligation of submitting annual financial reports; (2) there are serious grounds for believing that the actions of an organization are contrary to the rule of law; or (3) it is limited to cases in which a significant number of workers call for an investigation of allegations of embezzlement or lodge a complaint (General Survey, op. cit., paragraph 109). Furthermore, the Committee considers that problems of compatibility with the Convention arise when the administrative authority has the power to audit the trade union's accounts, to inspect such accounts and records and demand information at any time (see General Survey, op. cit., paragraph 110). ***The Committee requests the Government to take the necessary measures in order to ensure full respect of the abovementioned principles. The Committee requests the Government to take the necessary steps to ensure that the governments of the provinces take such measures as well.***

Finally, the Committee is raising in a direct request issues regarding certain restrictions to the right to strike (prohibition of types of strike; broad definition of services where strike action can be forbidden; compulsory arbitration at the request of either party to a conflict; and penal sanctions, in particular for supporting illegal strikes).

*Article 4. Dissolution of organizations.* The Committee notes that the registration of a trade union can be cancelled for the following reasons: following a complaint made by the registrar that the trade union has contravened the provisions of the Act or its constitution, or failed to submit its annual returns to the registrar (IRA), or obtained less than 10 per cent (IRA) or 15 per cent (BIRA, KPIRA and PIRA – the latter specifying “during two consecutive referendums”) of total votes polled in an election for determination of a collective bargaining agent (sections 11(1)(a), (d), (e) and (f) of the IRA, 12(1)(a) and (b), and 12(3)(d) of the BIRA, KPIRA and PIRA, and 12(1)(a) and (b) of the SIRA); if the statement of expenditure of a union is found incorrect following an audit of the annual returns (section 16(5) of the IRA); if a person who is disqualified under section 18 for having been convicted and sentenced to imprisonment for two years or more for committing an offence involving moral turpitude under the Pakistan Penal Code is elected to be an officer of a registered trade union (section 11(5) of the IRA); for having been convicted of the offence of embezzlement or misappropriation of funds (BIRA and PIRA), or of contraventions to the Act (KPIRA and SIRA), or heinous offence under the Pakistan Penal Code, is elected to be an officer of a registered trade union (section 12(2) and (7) of the BIRA, KPIRA, PIRA and SIRA). 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. This can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution (General Survey, op. cit., paragraph 162). ***The Committee therefore requests the Government to take the necessary measures to amend the legislation so as to bring it into conformity with the Convention taking into account the principles above and to take all the necessary measures to ensure that the governments of the provinces take the measures to likewise amend the legislation.***

The Committee notes that, under the IRA, the Commission's decision directing the registrar to cancel the registration of a union cannot be appealed in court (section 59). The Committee recalls that cancellation of a trade union's registration should only be possible through judicial channels and that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association. The Committee further emphasizes that judges should be able to deal with the substance of a case to enable them to decide whether or not the measure of dissolution would not be in violation of the rights accorded to occupational organizations by the Convention. ***The Committee requests the Government to take the necessary measures to amend the IRA so as to ensure that any decision to cancel trade union registration can be appealed in court.***

*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 would be submitted to the Cabinet for approval. The Committee notes the Government's indication that the rules have not yet been finalized. ***The Committee once again requests the Government to provide detailed information on the progress made in adopting the Export Processing Zones (Employment and Service Conditions) Rules, 2009, and a copy thereof as soon as they are adopted. The Committee recalls that the Government may avail itself of the technical assistance of the Office.***

***The Committee strongly hopes that all necessary measures will be taken to bring the national and provincial legislation into full conformity with the Convention and requests the Government to provide information on all steps taken or envisaged 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: 1952)**

The Committee notes the observations submitted by the Government on the comments of the International Trade Union Confederation (ITUC) concerning the allegation of intimidation on the part of employers in which it indicates that: (1) employers and employees are the main actors in industrial relations; (2) the system works with mutual understanding; and (3) any misunderstanding between the parties might lead to mistrust but in case of any grievance, the workers have the right to approach labour courts and any other courts of law. The Committee further notes the comments submitted by the ITUC in a communication dated 31 July 2012, referring to similar issues as the ones raised in its 2010 and 2011 communications and, in particular, to allegations of anti-union dismissals and acts of interference in trade union internal affairs by employers (intimidation, and blacklisting of trade unions and their members). ***The Committee requests the Government to provide its observations on the 2012 ITUC allegations.***

The Committee recalls that in its previous observation, it had noted that the Government had enacted the 18th Amendment to the Constitution whereby the matters relating to industrial relations and trade unions were devolved to the provinces. In this respect, the Committee expressed the hope that any new legislation, whether at the provincial or national levels, would be adopted in full consultation with the social partners concerned and that these instruments would be in full conformity with the Convention. The Committee notes that industrial relations acts have been adopted in the Provinces of Balochistan, Khyber-Pakhtoonkhwa, Punjab and Sindh in 2010. The Committee notes that the Industrial Relations Act (IRA), 2012, which regulates industrial relations and registration of trade unions and federation of trade unions in the Islamabad Capital Territory and in the establishments which cover more than one province (section 1(2) and (3)), replaces the Industrial Relations Ordinance (IRO) of 2011. It notes with ***regret*** that most of its previous comments on the Industrial Relations Act, 2008, and on the IRO, 2011, have not been addressed by the IRA, 2012. It further notes that the Sindh Industrial Relations (Revival and Amendment) Act, 2010 (SIRA), revives the IRA, 2008, omitting section 87(3), and that the Balochistan IRA (BIRA), the Khyber-Pakhtoonkhwa IRA (KPIRA) and the Punjab IRA (PIRA) all raise similar issues as the IRA, 2012.

***Scope of application of the Convention.*** The Committee notes that by virtue of their sections 1(3), the IRA, 2012, the BIRA, KPIRA, PIRA and SIRA maintain the same exclusion from their scope of application as previously existed under the IRO 2002 and IRA 2008 (independent agricultural workers, workers of charitable organizations, workers employed by the Pakistan Security Printing Corporation or the Security Papers Limited, etc.), and that the definition of “worker” and “workman” excludes any person who is employed mainly in managerial or administrative capacity, as examined in detail by the Committee in its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee further notes that the BIRA excludes tribal areas from its scope. The Committee notes the Government’s indication that the industrial relations laws have been framed after consultation with workers’ organizations and that the IRA 2012 is applicable to all categories of workers with certain exceptions that have been made due to the specific security situation in the country. The Committee recalls that the only categories of workers which can be excluded from the application of the Convention are the armed forces, the police and public servants engaged in the administration of the State. ***The Committee therefore requests the Government to take the necessary measures in order to amend the legislation so as to ensure that all workers, with the only possible exception of the armed forces, the police and public servants engaged in the administration of the State, enjoy the rights enshrined in the Convention. It underlines the importance that the governments of the provinces take measures in the same direction. Furthermore, the Committee requests the Government to indicate whether workers in Balochistan’s tribal areas enjoy the rights enshrined in the Convention.***

With regard to public servants, the Committee notes that the IRA does not apply to workers employed in the administration of the State other than those employed as workmen (section 1(3)(b)) – the BIRA, KPIRA, PIRA and SIRA adds “as workman employed by the Railway and Pakistan Post”. The Government indicates that “persons employed in the administration of the State” imply persons employed in Government departments. ***The Committee requests again the Government to specify and provide examples of categories of workers employed in the administration of the State excluded from the scope of application of the legislation.***

***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 would be submitted to the Cabinet for approval. The Committee notes the Government’s indication that the rules have not yet been finalized. ***The Committee once again requests the Government to provide detailed information on the progress made in adopting the Export Processing Zones (Employment and Service Conditions) Rules, 2009, or a copy thereof as soon as they are adopted.***

***Article 1 of the Convention. Protection against acts of anti-union discrimination. Banking sector.*** The Committee had previously requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, imposing sanctions of imprisonment and/or fines on the grounds of the exercise of trade union activities during office hours. The Government indicated that the Federal Cabinet at its meeting held on 1 May 2010 approved the repeal of this provision and that the final legislation is under preparation. The Committee notes that the Government indicates that amendment of section 27-B is under process with the Senate. ***The Committee once again expresses the firm hope that the relevant amendment will be adopted in the near future and requests the Government to transmit a copy thereof.***

*Article 4. Collective bargaining.* The Committee notes that, according to section 19(1) of the IRA, 2012, and sections 24(1) of the BIRA, KPIRA, PIRA and SIRA, if a trade union is the only trade union in the establishment or group of establishments (or industry, in the BIRA, KPIRA, PIRA), but it does not have at least one third of the employees as its members, no collective bargaining is possible at the given establishment or industries. The Committee recalls that it had previously requested the Government to amend similar sections which existed under the IRO 2002, IRA 2008 and IRO 2011. The Committee notes the Government's indication that a collective bargaining agent has to bargain for all the workers employed in an establishment and that certifying a union without any strength will not only be unjustified but may also increase chances of pocket unions to become collective bargaining agents. ***The Committee requests the Government to take the necessary measures in order to ensure that if there is no union representing the required percentage to be designated as a collective bargaining agent, collective bargaining rights are granted to the existing union, at least on behalf of its own members. The Committee underlines the importance that the governments of the provinces take measures in the same direction.***

The Committee notes that under sections 23(1) of the IRA, 33(1) of the BIRA and SIRA, 29(1) of the KPIRA and 28(1) of the PIRA, shop stewards are either nominated (by a collective bargaining agent) or elected (in the absence of a collective bargaining agent) in every undertaking employing over 50 workers (25 workers, in the case of the IRA) to act as a link between the workers and the employer, to assist in the improvement of arrangements for the physical working conditions, etc. (sections 24 of the IRA, 33(5) of the BIRA and SIRA, 29(5) of the KPIRA and 28(5) of the PIRA). Furthermore, sections 25 of the IRA, 34 of the BIRA and SIRA, 30 of the KPIRA and 29 of the PIRA provide for works councils (bipartite bodies), which are established in every undertaking employing over 50 workers. These sections (and section 26 of the IRA) lists the functions of such councils and further provides that the management shall not take any decision relating to working conditions without the corresponding advice from workers' representatives, which could be nominated (by a collective bargaining agent) or be elected by workers employed by the enterprise in question (in the absence of a collective bargaining agent). Finally, sections 28 of the IRA, 35 of the BIRA and SIRA, and 31 of the KPIRA, provide for the joint management boards to look after the fixation of job and piece-rate, planned regrouping or transfer of workers, laying down the principles of remuneration and introduction of remuneration methods, etc. (these functions are granted to works councils under the PIRA). The IRA specifies that the worker representatives in such boards are nominated by a collective bargaining agent if there are one or more trade unions at the enterprise, or are chosen from amongst workers of the relevant undertaking, if there is no collective bargaining agent. In the light of the abovementioned provision contained in section 19(1) of the IRA and sections 24(1) of the BIRA, KPIRA, PIRA and SIRA, the Committee considers that the position of a single trade union not enlisting over one third of workers employed at the relevant establishment or group of establishments (and therefore, as indicated above, not enjoying collective bargaining rights) may be undermined in practice by other worker representatives represented at the abovementioned bodies, the functions of which have an impact upon the regulation of terms and conditions of employment. The Committee notes the Government's indication that: (1) the position of such a trade union is not undermined by the use of secret ballot for determination of workers' representation as shop steward and in works councils and joint management boards; and (2) the IRA provides under section 6 that there shall be at least two trade unions in an establishment. ***The Committee requests the Government to take the necessary measures to amend its legislation so as to ensure that the position of such trade unions is not undermined by the existence of other workers' representatives, particularly when there is no collective bargaining agent. The Committee underlines the importance that the governments of the provinces take measures in the same direction.*** The Committee notes the Government's statement according to which the IRA provides under section 6 that "there shall be at least two trade unions in an establishment". ***The Committee requests the Government to explain the consequences when there is just one union in an establishment.***

*Compulsory conciliation.* The Committee notes the possibility of compulsory conciliation requested by the law in the collective bargaining process (sections 36 and 37 of the IRA, 45 and 46 of the BIRA and SIRA, 41 and 42 of the KPIRA, 36 and 37 of the PIRA) and refers to the observations made under Convention 87. Moreover, the Committee notes that the conciliator is appointed either directly by the Government (43 of the BIRA and SIRA, 39 of the KPIRA, 35 of the PIRA) or by the Commission whose ten members are appointed by the Government, with only one member representing employers and another one representing trade unions (section 53 of the IRA). The Committee underlines that the system of appointment of the conciliator, as well as the composition of the Commission, could raise questions concerning the confidence of the social parties in the system. ***The Committee requests the Government to take measures to amend this provision so as to ensure the confidence of the social partners in the conciliation mechanism. The Committee underlines the importance that the governments of the provinces take measures in the same direction.***

## Panama

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)**

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)**

*Comments from workers' and employers' organizations.* The Committee notes the Government's reply to the observations dated 17 August 2011 from the General and Autonomous Confederation of Workers of Panama (CGTP) and the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP); and to the observations of the National Confederation of United Independent Unions (CONUSI) dated 14 October 2011. The Committee also notes the observations from the International Trade Union Confederation (ITUC) dated 31 July 2012 and from FENASEP dated 24 August 2012 referring to matters already examined by the Committee, and also the refusal of the administrative authority to grant legal personality to various trade unions. The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

*Technical assistance.* In its previous observation the Committee noted that further to the discussion that took place within the Conference Committee on the Application of Standards in June 2011, the Government accepted the visit of a technical assistance mission with a view to drawing up, as a matter of urgency, a draft of specific provisions to amend the legislation and bring it into conformity with the Convention. The Committee notes that the mission took place from 29 January to 2 February 2012 and in particular it observes with *interest* that, through the good offices of the mission, the representatives of the Government, the National Council of Organized Workers (CONATO), the National Confederation of United Independent Unions (CONUSI) and the National Council of Private Enterprise (CONEP) signed an agreement to: (1) launch dialogue on the Committee's comments on the application of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); (2) carry out training and awareness-raising activities on freedom of association, collective bargaining and social dialogue, in the context of which the comments of the ILO supervisory bodies will be examined in depth; and (3) establish with ILO assistance a tripartite commission for the rapid handling of complaints which will examine, as a matter of urgency and with the aim of finding solutions and reaching agreements, any reports of violations of freedom of association and collective bargaining.

The Committee further notes the Government's statements that under the abovementioned tripartite agreement: (1) the Committee on the Implementation of the Tripartite Agreement, whose objective is to seek forms of consensus based on compromise to enable national law to be aligned to the provisions of Conventions Nos 87 and 98, and the Committee for the Rapid Handling of Complaints relating to freedom of association and collective bargaining, have become operational; (2) as a result of the meetings of the two aforementioned committees, with ILO technical assistance, a number of agreements have been signed and the tripartite members of the committees elected their moderator by consensus; (3) with a view to strengthening and giving legal formality to tripartite dialogue which has been occurring in the country on the basis of the tripartite agreement, Executive Decree No. 156 of 13 September 2012 was promulgated, creating the Committee on the Implementation of the Tripartite Agreement and the Committee for the Rapid Handling of Complaints relating to freedom of association and collective bargaining, and appointing a moderator; (4) in July 2012 the President of the Republic convened a meeting with the country's trade union leaders with a view to achieving a rapprochement with the union leadership and launching a positive dialogue with the sector; (5) the education subsidy to FENASEP and the General Workers' Union of Panama (UGT) was restored, demonstrating the Government's wish to settle this matter as one of the pending issues relating to freedom of association which was highlighted by the public sector workers; and (6) with the Labour Foundation of Panama and ILO technical assistance, a workshop on Conventions Nos 87 and 98 was held in May 2012 for the members of the Committee on the Implementation of the Tripartite Agreement and was attended by representatives of workers and employers and independent consultants, as well as officials from the Ministries of Labour, Education and Health, the Administrative Careers Directorate, the University of Panama, the Social Security Fund, private universities and trustees of the Labour Foundation. The Committee further notes that during the 2012 session of the International Labour Conference, the International Labour Standards Department facilitated a meeting between the tripartite delegations of Switzerland and Panama in order to share experiences in the field of social dialogue.

***The Committee welcomes the initiatives in the field of social dialogue and trusts that the allegations made by the ITUC and FENASEP concerning the refusal of the administrative authority to grant legal personality to a number of trade unions will be dealt with in the context of the Committee for the Rapid Handling of Complaints.***

#### **Pending legislative issues**

The Committee recalls that for a number of years it has been making comments on the following matters:

*Article 2 of the Convention.* *Right of workers and employers without distinction whatsoever to establish and join organizations.*



- sections 179 and 182 of the Single Text of Act No. 9, as amended by Act No. 43 of 31 July 2009, 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 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 182 of the Single Text of Act No. 9;
- 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.

*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.  
*Right of organizations to organize their activities and to formulate their programmes in full freedom.*
- legislation interfering with the activities of employers' and workers' organizations (sections 452.2, 493.4 and 494 of the Labour Code) (closure of the enterprise in the event of a strike and prohibition of entry to non-striking workers); the obligation for non-members to pay a solidarity contribution in recognition of the benefits derived from collective bargaining (section 405 of the Labour Code); the automatic intervention of the police in the event of a strike (section 493(1) of the Labour Code);
- 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 authority of the Regional or General Labour Directorate to refer labour disputes to compulsory arbitration in private transport enterprises (sections 452 and 486 of the Labour Code); and 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 155 and 192 of the Single Text of 29 August 2008, as amended by Act No. 43 of 31 July 2009).

The Committee notes with *interest* that: (1) as regards the alignment of national standards relating to administrative careers with the provisions of Conventions Nos 87 and 98, the Committee on the Implementation of the Tripartite Agreement has the specific mandate to deal with this subject and a tripartite subcommittee was established to examine subjects relating to administrative careers; (2) the subcommittee (Working Subcommittee on Administrative Careers) is tasked with examining all matters relating to freedom of association and collective bargaining for public officials; (3) it held meetings on 11 May 2012 with representatives of the Government, the Administrative Careers Directorate and, for the workers, representatives of FENASEP, which chairs the subcommittee; and (4) in the context of the subcommittee, consensus has been reached on a number of points relating to freedom of association and the modalities of representation of public servants, and it is hoped that once consensus has been reached between the parties regarding the Committee's various observations, it will be possible to adopt appropriate measures aligning the Act concerning administrative careers with the provisions of the ILO Conventions.

As regards the other pending legislative issues, the Committee notes the Government's statements that: (1) these subjects are included in the list of pending issues which the Implementation Committee has been preparing and the order of priority will be determined in order to harmonize the legislation in force with Conventions Nos 87 and 98; (2) it is hoped that the dynamics will soon be established to deal with all non-administrative career matters; and (3) many of these subjects are issues that cannot be resolved overnight, since they go back more than ten years, but through the social dialogue fostered by the tripartite agreement every effort will be made in the Implementation Committee to arrive at compromises enabling the national legislation to be aligned to the Convention. *The Committee trusts that in the context of the process of tripartite dialogue which has been initiated the national legislation will be brought fully into conformity with the Convention. The Committee requests the Government to provide information in its next report on any developments in this regard.*

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

*Observations from the International Trade Union Confederation (ITUC).* The Committee notes the Government's reply to the ITUC's observations of 2010 and particularly the Government's statement that the cases involving allegations of anti-union dismissals were examined by the administrative and judicial authorities, that the reinstatement of dismissed union leaders and members was ordered in some cases, and that in other cases the complaints concerning dismissal were rejected. The Committee further notes the observations from the ITUC, dated 4 August 2011 and 31 July 2012, concerning issues already examined by the Committee and also allegations of anti-union dismissals and harassment of trade union officers in the education sector.

*Technical assistance.* The Committee notes that further to the discussion that took place within the Conference Committee on the Application of Standards in June 2011 on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Government accepted the visit of an ILO technical assistance mission. The Committee notes that the mission took place from 29 January to 2 February 2012 and, in particular, it observes with

*interest* that, through the good offices of the mission, the representatives of the Government and of the National Council of Organized Workers (CONATO), the National Confederation of United Independent Unions (CONUSI) and the National Private Enterprise Council (CONEP) signed an agreement to: (i) launch dialogue on the Committee's comments on the application of Conventions Nos 87 and 98; (ii) carry out training and awareness-raising activities on freedom of association, collective bargaining and social dialogue, in the context of which the comments of the ILO supervisory bodies will be examined in depth; and (iii) establish, with ILO assistance, a tripartite committee for the rapid handling of complaints which will examine, as a matter of urgency and with the aim of finding solutions and reaching agreements, any reports of violations of freedom of association and collective bargaining. The Committee further notes the Government's statement that under the abovementioned tripartite agreement the Committee on the Implementation of the Tripartite Agreement, whose objective is to seek forms of consensus based on compromise to enable national law to be aligned with the provisions of Conventions Nos 87 and 98, and the Committee for the Rapid Handling of Complaints relating to Freedom of Association and Collective Bargaining, have become operational. ***The Committee welcomes the initiatives in the field of social dialogue and trusts that the allegations made by the ITUC concerning anti-union dismissals and harassment of trade union officers in the education sector will be dealt with in the context of the Committee for the Rapid Handling of Complaints.*** Finally, the Committee refers to the observation concerning the application of Convention No. 87 for further information on other measures taken as follow-up to the tripartite agreement mentioned above.

*Articles 4 and 6 of the Convention. Right to collective bargaining. Pending legislative issues.* The Committee's previous comments referred to:

- the need to amend section 514 of the Labour Code so that the payment of wages for strike days attributable to the employer is not automatically imposed by law but is a matter for collective bargaining between the parties concerned;
- the need to amend section 427 of the Labour Code, which requires that the number of representatives of the parties in negotiations shall range from two to five;
- the need to amend section 12 of Act No. 8 of 1981, which provided that no enterprises (other than construction companies) were bound to conclude a collective labour agreement in the first two years of operation, which could, in practice, imply denial of the right to collective bargaining. The Committee notes with *satisfaction* the adoption of Act No. 32 of 5 April 2011, which establishes a comprehensive and specific special regime for the establishment and operation of export processing zones and repeals section 12 of Act No. 8 of 1981;
- the need to regulate mechanisms for the settlement of legal disputes and the possibility for employers to submit lists of demands and initiate a conciliation procedure; and
- the need to guarantee the right to collective bargaining for public employees or officials who are not engaged in the administration of the State.

***The Committee trusts that, in the context of the process of tripartite dialogue that has been launched, the national legislation will be brought into full conformity with the Convention. The Committee requests the Government to provide information in its next report on any further developments in this respect.***

*Other matters. Restrictions on collective bargaining in the maritime sector.* In its previous comments the Committee noted restrictions on collective bargaining in the maritime sector under section 75 of Legislative Decree No. 8 of 26 February 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 noted the Government's statement that the Ministry of Labour (MITRADEL), the Ministry of Trade and Industry (MICI) and the Maritime Authority of Panama (AMP) are preparing the first draft of a resolution providing for measures to respect the collective rights of seafarers with a view to ensuring observance of the right to organize and to engage in collective bargaining and further noted that the AMP and MITRADEL had held meetings to seek a consensus on the steps to be taken in this regard. The Committee notes the Government's indication in its report that: (i) by means of Ministerial Decision No. DM.126.2010 of 19 April 2010, MITRADEL took steps to ensure the application of the provisions of the third volume of the Labour Code, concerning workers' rights to organize and to bargain collectively under the terms of Legislative Decree No. 8 of 1998; and (ii) section 3 of the aforementioned Ministerial Decision designates the Directorate-General for Labour to implement the plan established in section 1 (setting up of a mechanism for handling complaints, inspections in response to complaints, establishment of a freephone number for complaints or requests for advice or guidance) and to prepare the additional regulations and procedures needed for its implementation. ***The Committee requests the Government to supply information in its next report on any progress made regarding collective bargaining in the maritime sector.***

## Papua New Guinea

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1976)

The Committee notes the developments with regard to the adoption of the Industrial Relations Bill communicated by the Government, and in particular, the Committee takes note that, according to the Government's report, the Sixth Draft Industrial Relations Bill had gone through several deliberations, revisions and amendments resulting in a final version finalized in November 2011. The Committee notes that the Industrial Relations Bill 2011 had been already endorsed by the National Tripartite Consultative Council in the Ministry of Labour and Industrial Relations and submitted to the Central Agency Consultative Council, being currently awaiting deliberations and preparation of a Ministerial Advice to be attached before it is presented to the National Executive Council, and eventually into Parliament. The Committee notes the Government's commitment to provide the Committee with a copy of the Act once it has been adopted. ***The Committee requests the Government to ensure the conformity of the Industrial Relations Bill 2011 with the provisions of the Convention and, in particular, with respect to the provisions in relation to Article 4 and the concerns mentioned below.***

The Committee takes note of the comments regarding the lack of enforcement of the law in practice in respect with discrimination acts against workers seeking to form or join a union, provided by the International Trade Union Confederation (ITUC) in a communication dated 31 August 2011. ***The Committee requests the Government to reply to the comments made by the ITUC in its next report.***

***Article 4. Promotion of collective bargaining.*** The Committee notes that, according to the Government's report, the amendments requested by the Committee concerning the power of the Minister to assess collective agreements on grounds of public interest and compulsory arbitration when conciliation fails have not been introduced in the Industrial Relations Bill; the Committee's comments were sent to the author of the Bill, however feedback has not yet been received. Therefore the Committee has to mostly reproduce its previous observation with regard to the abovementioned points.

***Power of the Minister to assess collective agreements on the ground of public interest.*** The Committee recalls that the approval of collective agreements may only 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), but may not be refused for general reasons of public interests. ***The Committee once again requests the Government to take the necessary measures to bring section 50 of the Industrial Relations Bill 2011 in conformity with the abovementioned principle, and to provide information thereon in its next report.***

***Compulsory arbitration in cases where the conciliation between the parties has failed.*** The Committee recalls that compulsory arbitration is only acceptable if it is requested by both parties involved in a dispute, or in the case of disputes in the public service only when it involves 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. ***The Committee once again requests the Government to take the necessary measures to bring sections 78 and 79 of the Industrial Relations Bill 2011 into 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 the International Trade Union Confederation (ITUC) dated 4 August and 31 July 2012 which refer to matters already under examination by the Committee. The Committee also recalls that in its previous comment it requested the Government to send its observations on the comments of the ITUC dated 24 August 2010, which referred to the arrest of trade union members. ***The Committee once again requests the Government to send its observations in this regard.***

***Pending legislative issues.*** The Committee recalls that for many years it has been commenting on the incompatibility of the following legislative provisions 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 board 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 have been 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); and
- 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 Committee recalls that in its previous comments it noted the drafting of a Bill to amend certain sections of the Labour Code and Amending Act No. 496/94. The Committee notes the Government's indication in its report that meetings were held in 2011 with the President of the Legislative Commission of the Chamber of Senators relating to the draft bill to amend certain sections of the Labour Code and that it is proposed to hold an awareness-raising seminar with parliamentarians and representatives of the judicial system on international labour standards with a view to giving an impulse and making progress with the necessary reforms. ***The Committee firmly trusts that the necessary measures will be taken so that the provisions in question are modified or amended in the near future. The Committee invites the Government to have recourse to the technical assistance of the Office for the process of amending the legislation. The Committee requests the Government to provide information in its next report on any developments in this respect.***

Finally, the Committee recalls that, with reference to sections 284–320 of the Code of Labour Procedure respecting the referral of collective disputes to compulsory arbitration, it noted previously that, according to the Government, these provisions were tacitly repealed by Article 97 by the Constitution of the Republic, promulgated in 1992, which provides that “the State shall facilitate conciliatory solutions to labour disputes and social dialogue. Arbitration shall be optional”. ***The Committee once again requests the Government, in accordance with the Constitution and in order to avoid any ambiguity in interpretation, to take the necessary measures to repeal explicitly sections 284–320 of the Code of Labour Procedure.***

***The Committee hopes to be able to note tangible progress at the legislative level in the near future and requests the Government to provide information in its next report on any developments in this regard.***

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

The Committee notes the observations from the International Trade Union Confederation (ITUC) dated 4 August 2011 and 31 July 2012 and from the National Union of Workers (CNT) dated 31 August 2011, which refer to the issues being examined by the Committee as well as to anti-union practices and to the small number of collective agreements concluded in the public and private sectors. ***The Committee requests the Government to send its comments in relation to all the observations referred to above.***

*Pending legislative matters.* The Committee recalls that it has been commenting for many years 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 previously indicated that the penalties laid down in the Labour Code for non-compliance with the legal provisions on this point in sections 385, 393 and 395 are not an adequate deterrent, except in the case of a repeat offence by the employer, in which case the fine is doubled); the Committee recalls, with regard to protection against acts of anti-union discrimination, that the Committee on Freedom of Association also asked the Government to ensure, in consultation with the social partners, the effectiveness of national procedures to prevent or punish acts of discrimination (see Case No. 2648, 355th Report, paragraph 963); and
- the delays in the application of justice in relation to acts of anti-union discrimination and interference.

In its previous comments, the Committee noted the preparation of preliminary draft legislation amending certain sections of the Labour Code and also noted amending Act No. 496/94. The Committee notes the Government's statement in its report that in 2011 meetings were held with the president of the Legislation Committee of the Chamber of Senators in relation to the preliminary draft legislation to amend certain sections of the Labour Code and that it is proposed to hold an awareness-raising seminar with members of parliament and officers of the judiciary concerning international labour standards, with a view to promoting the progress of the necessary reforms. ***The Committee trusts that the necessary steps will be taken to modify or amend the provisions concerned in the near future. The Committee invites the Government to avail itself of technical assistance from the Office with respect to the process of amending the legislation. The Committee requests the Government to provide information in its next report on any progress made in this respect.***

*Article 6 of the Convention. Public servants 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 or other prejudicial measures against union members because of their membership or legitimate union activities. The Committee notes that the Government does not supply any information on this matter. ***The Committee again requests the Government to take the necessary steps 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 officers, and also to establish penalties that act as an adequate deterrent against violations.***

*Other matters. Promotion of collective bargaining and social dialogue in practice.* The Committee notes the indication by the ITUC that, as a result of the Government's promotion of social dialogue, there are now 14 forums for dialogue; however, collective bargaining only covers 4 per cent of workers. The Committee notes the Government's indication that between August 2010 and July 2012 a total of 14 collective agreements were concluded in the public sector and 55 in the private sector. ***The Committee requests the Government to continue to provide information on this subject and to take steps to encourage and promote collective bargaining, as provided for by Article 4 of the Convention.***

## Peru

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

*Comments from workers' and employers' organizations.* The Committee notes the Government's reply to the comments made in 2010 by the General Confederation of Workers of Peru (CGTP), the Confederation of Workers of Peru (CTP), the Autonomous Workers' Confederation of Peru (CATP) and the International Trade Union Confederation (ITUC) and notes in particular the information that magistrates have the right to organize and that the National Association of Magistrates has existed since 1977. The Committee also notes the comments of 4 August 2011 and 31 July 2012 by the ITUC, which refer to matters already raised by the Committee, and the Government's reply thereon dated 21 September 2012. It further notes the comments of 31 August 2012 by the CATP stating that the General Labour Bill, referred to by the Government in its report, seeks to delay compliance with the Convention and that the Collective Labour Relations Act has not as yet been amended as advised by the ILO supervisory bodies.

Lastly, the Committee takes note of the comments of 28 August 2010 by the Lima Chamber of Commerce (CCL) referring to the scope of the Convention's application to certain categories of workers, and to decisions by the administrative authority declaring strikes unlawful.

*Legislative matters.* In its previous comments, the Committee referred to the following matters:

*Article 2 of the Convention. Right of workers to establish and join trade unions.* The Committee recalls the need to ensure that workers under special training arrangements enjoy the rights enshrined in the Convention (Act No. 28518 and its regulations, General Education Act). The Committee notes the CCL's assertion that special training arrangements, independent services and activities arising out of civic obligations fall outside the scope of the Convention. The Committee points out that according to *Article 2* of the Convention, workers and employers without distinction whatsoever and without previous authorization, shall have the right to establish and join organizations of their own choosing, subject only to the rules of the organization concerned. The only exceptions to this principle that the Convention allows are set forth in *Article 9(1)*, under which States may determine the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police. The Committee emphasizes that workers under special training arrangements should be able to join organizations, if they so wish, in order to be represented by them.

*Article 3. Right of organizations to organize their activities and formulate their programmes.* The Committee recalls:

- The need to amend 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 recalls in this connection the principle that if the legislation provides that a vote by workers is required before a strike can be held, it should be ensured that only the votes casted are counted and that the required quorum or majority is fixed at a reasonable level.
- The need to ensure that authority to declare a strike unlawful lies not with the Government but with an independent body that has the trust of the parties (a point made several times by the Committee on Freedom of Association). The Committee observes in this connection that the CCL believes that responsibility for declaring a strike unlawful must lie with the Government, since participation by an independent body implies a high degree of subjectivity, which would be a hindrance to any feasible settlement and to observance of the social rights involved.

*Article 5.* The Committee recalls the need to ensure that federations and confederations of public servants may, if they so wish, join confederations consisting of organizations of workers who are not state workers (section 19 of Supreme Decree No. 003-82-PCM on the constitution of federations and confederations of public servants, Supreme Decree No. 003-2004-TR and Directive No. 001-2004-DNRT).

In its previous comments, the Committee noted in this connection that the Government had reported the drafting of a General Labour Bill to repeal the Industrial Relations Act and the provisions in question, and asked the Government to keep it informed in this regard. The Committee notes that in its report the Government states that a new General Labour

Bill, which was examined by the National Council for Labour and Employment Promotion (CNTPE) and has been referred to a Sectoral Technical Committee (CTS) consisting of technicians from the Ministry of Labour and Employment Promotion, and that consultations are still being held. The Committee also notes that since observations on the draft are in the process of being reviewed and evaluated, the State has not adopted an official position on its content since it is not as yet part of the national legislation.

*The Committee hopes that in the process to finalize the draft General Labour Bill to amend the Industrial Relations Act, the representative workers' and employers' organizations will continue to be consulted. The Committee also trusts that its comments will be taken into account in the text that is finally adopted and reminds the Government that technical assistance from the Office is available.*

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

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

*Comments by workers' organizations.* The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 4 August 2011 and 31 July 2012, and the Government's detailed replies thereon. The Committee notes that the Autonomous Workers' Confederation of Peru (CATP) sent comments in a communication dated 31 August 2012 and the General Confederation of Workers of Peru (CGTP) in a communication dated 4 September 2012.

The Committee notes that the workers' organizations denounce anti-union practices, the denial of the right to collective bargaining for workers under training schemes, the shortage of budgetary resources in light of the duration of judicial proceedings in cases of anti-union offences and obstacles to the right to collective bargaining in the public and private sectors (budgetary restrictions on bargaining, obstacles to collective bargaining at the branch level, certain aspects of the regulation of arbitration, etc.). *The Committee requests the Government to provide its observations on these issues (some of which are dealt with below) and invites it to refer these matters to tripartite dialogue.*

*Legislative matters.* The Committee notes the information provided by the Government concerning the formulation of the draft General Labour Act (LGT) to repeal the Collective Labour Relations Act and replace it. The Committee notes that the draft text is currently undergoing revision. *The Committee requests the Government to provide information on any developments in this respect and to ensure that this process is still the subject of tripartite consultations, and to take into account its comments. The Committee recalls that the technical assistance of the Office is available to the Government.*

*Article 1 of the Convention. Protection against any acts of anti-union discrimination.* With reference to the excessive duration of judicial proceedings in cases of complaints of acts of anti-union discrimination or interference, the Committee previously requested the Government to provide information on the impact of the new Act on labour procedure (Act No. 29497 of 30 December 2009) on the length of judicial proceedings in cases of complaints of acts of anti-union discrimination or interference. The Committee notes the Government's indication in its report that the ninth additional provision of the above Act provided for its progressive entry into force. For that purpose, the Technical Institutional Team for the implementation of the new Act on labour procedure was established and entrusted, among other matters, with determining a progressive implementation schedule for the Act (six judicial districts in 2010, five in 2011 and four in 2012). The Committee notes the Government's indication that the Act makes changes in labour proceedings with a view to the rapid resolution of labour disputes (adoption of the principle of oral hearings, the holding of hearings for sentencing, the digitalization of files, access to electronic information, etc.). The Committee notes with *interest* the indication in the Government's report that the length of proceedings in trade union cases is now approximately four months in courts of first instance and three months in courts of second instance. *The Committee requests the Government to continue to provide information on any developments in relation to the length of proceedings and the outcome of proceedings including the sanctions imposed in case of anti-union discrimination.*

*Article 4. Measures to promote collective bargaining.* In its previous comment, the Committee requested the Government to provide information on the trade union rights of workers employed under "vocational training schemes", and particularly on the right to collective bargaining of the organizations representing them. The Committee notes the Government's indication that vocational training schemes are currently governed by Act No. 28518 on vocational training schemes and its regulations (Supreme Decree No. 007-2005-TR), as well as the General Education Act No. 28044, where applicable, and that such schemes are related to theoretical and practical learning through the performance of programmed vocational training work. The Committee observes that neither Act No. 28518 nor its Regulations, nor the General Education Act recognize the right of association and of collective bargaining of workers covered by such schemes. *Noting the information provided by the trade union organizations confirming that it is impossible for workers covered by vocational training schemes to engage in collective bargaining, the Committee requests the Government to ensure that the draft General Labour Act enables such workers to enjoy the right to organize and the possibility to be represented by trade unions in collective bargaining.*

*Level of collective bargaining and autonomy of the parties.* Finally, taking into account the comments made by the various national organizations, the Committee requested the Government to provide additional detailed information on the manner in which collective disputes relating to the level of collective bargaining are resolved, in both law and practice. The Committee notes the Government's reference to sections 59 to 65 of the Collective Labour Relations Act, with the

indication that the Ministry of Labour has envisaged the so-called procedure of “extra-proceedings” with the purpose of establishing machinery to prevent and resolve labour disputes through dialogue between the social partners. The Committee further notes the adoption of Supreme Decree No. 014-2011-TR, section 1 of which (amending section 61 of the Collective Labour Relations Act) provides that “the parties shall have the possibility to have recourse to optional arbitration in the following situations: (a) the parties have not reached agreement in the first negotiation at the level or its content; and (b) when, during bargaining on the claims, acts of bad faith occur which have the effect of postponing, obstructing or preventing agreement from being reached”. The Committee further notes the Government’s indication that the above Supreme Decree is based on a ruling of the Constitutional Court of 2010, which found that “the arbitration referred to in section 61 of Supreme Decree No. 010-2003-TR is intended to determine the level of negotiation in cases of lack of agreement, and is optional, and not voluntary. That is, in cases of lack of agreement, and when one of the parties expresses the will to have recourse to arbitration, the other is bound to accept this formula for resolving the dispute”. The Government adds that, according to national jurisprudence, collective bargaining is possible at branch level just like at enterprise level and at bargaining unit level. The Committee notes the comments of the Chamber of Commerce of Lima, which considers that when agreement is not reached on the level of collective bargaining, it should take place at the enterprise level. In this respect, the Committee observes that the appointment of the president of the arbitration court is made by the administrative authority when the parties do not reach agreement, which may raise problems of confidence in the system, particularly in the public sector. *The Committee wishes to emphasize that existing bodies and procedures should in so far as possible promote negotiations between the social partners on the issue of determining the level of bargaining and should enjoy the confidence of the parties. The Committee invites the Government to initiate tripartite consultation on these matters.*

## Philippines

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)**

The Committee notes the information provided by the Government on the comments submitted by the International Trade Union Confederation (ITUC) in 2009 and 2010. In particular, it notes with *interest* from the Government’s report the following measures taken by the Government to strengthen the operational capacity of the Philippines National Police (PNP) and Armed Forces of the Philippines (AFP), with the objective of fostering an enabling environment for the enjoyment of constitutionally guaranteed civil liberties and trade union rights:

- (i) the issuance on 23 May 2011 of the *Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards, Company Security Guards and Similar Personnel during Labor Disputes* (PNP Guidelines);
- (ii) the conduct jointly by the Department of Labor and Employment (DOLE), PNP and the Philippine Economic Zone Authority (PEZA) of four area-wide orientation seminars for the Regional Coordinating Council and Regional Tripartite Industrial Peace Council (RTIPC) members, to foster common understanding among stakeholders on the PNP Guidelines and the respective functions and jurisdictions of the agencies and to ensure close coordination among DOLE, PNP and PEZA in resolving labour disputes;
- (iii) conduct from February to July 2012 of a total of 17 orientation seminars on the PNP Guidelines (including 13 for human resources personnel and security agencies under PEZA from various economic zones);
- (iv) issuance on 27 February 2012 of a DOLE Internal Operational Guidelines outlining the DOs and DON’Ts in the implementation of the PNP Guidelines to all the Regional Offices of the DOLE;
- (v) adoption by the National Tripartite Industrial Peace Council (NTIPC) on 17 April 2012 of the *DOLE-DILG-PNP-DND-AFP Joint Guidelines on the Conduct of the AFP/PNP Relative to the Exercise of Workers’ Right to Freedom of Association, Collective Bargaining, Concerted Actions and Other Trade Union Activities* (AFP Guidelines), as an offshoot of the Manifesto of Commitment signed by the participants to the DOLE–Labor Sector–AFP Summit on the Protection and Promotion of Workers’ Rights held on 21 July 2011, and after the input of three area-wide DOLE–Labor Sector–AFP–PNP summits and regional consultations conducted by the different RTIPCs from January to mid-March of 2012 as well as expanded sittings of the Tripartite Executive Committee of the NTIPC in late March 2012; the AFP Guidelines were signed and issued with ILO technical assistance on 7 May 2012 and are applicable to the involvement or mobilization of the members of the AFP, including Citizen Armed Force Geographical Units (CAFGUs), the PNP, the Local Chief Executive, and the Barangay Tanod in all cases of exercise of workers’ rights to freedom of association, collective bargaining, concerted actions and other trade union activities; they set out the rights of workers relative to the exercise of freedom of association; prohibit the deployment of all military personnel to address labour-related mass actions and disputes, except if support to the PNP is needed due to a security situation and at the written request of the DOLE; prohibit the intervention of local chief executives in any labour disputes, except when requested in writing by the DOLE; set out the protocol for the set-up of PNP or AFP detachments if near or proximate to a workplace where there is a potential or actual labour dispute or an ongoing trade union organizing or campaigning for certification as sole and exclusive bargaining agent; prohibit the conduct by the PNP

and the AFP of anti-insurgency campaigns vis-à-vis the exercise of trade union rights and civil liberties; and set out remedies in case of violations;

- (vi) the steps planned to ensure the implementation and compliance with the AFP Guidelines, such as: letter-directive of the AFP Chief of Staff to the ground troops; simplified Q&A materials to be issued by the DOLE by July–September 2012 for nationwide dissemination; initial round of nationwide advocacy on the subject by the DOLE, AFP, PNP, Department of the Interior and Local Government, Department of Justice (DOJ), Department of National Defense and the labour sector to be conducted from July to December 2012; inclusion of the labour rights module developed by the ILO into the training programme on human rights of the AFP and the PNP; requirement of PNP/AFP ILO enhanced training module for application or renewal of licence for private security personnel and security guards; and engagement of NTIPC members in the Bantay Bayanihan, a civil society-led oversight initiative on the implementation of the Internal Peace and Security Plan aiming at the reform of security sector institutions and thus extension of its oversight function to include monitoring of respect of labour rights; and
- (vii) the national plan of action 2012–13 towards full freedom of association and collective bargaining rights in the export processing sector concluded by the Government (including DOLE and PEZA) and representatives of national federations of workers’ organizations, which seeks to take steps to achieve improved compliance with the relevant ILO Conventions.

The Committee also notes the information provided by the Government concerning: (1) the NTIPC activity since its establishment and the issuance of NTIPC Resolution No. 3, Series of 2011, recognizing the need to create for the TIPC Monitoring Body a corresponding structure in the RTIPCs and providing that the RTIPCs shall create regional monitoring bodies which shall operate in accordance with the Operational Guidelines of the NTIPC Monitoring Body and ensure observance of international labour standards in the regions, monitor and evaluate complaints and prepare case profiles; (2) the forthcoming establishment of the National Monitoring Mechanism (NMM) led by the Commission on Human Rights, to bring together relevant state agencies and civil society organizations in a credible and inclusive forum for monitoring the nation’s progress in resolving extrajudicial killings and enforced disappearances; (3) the forthcoming establishment of the Presidential Committee for the Prevention and Investigation of Extralegal Killings, Harassments, Intimidation, Torture and Enforced Disappearances, a “super body” intended to replace Task Force 211 and serve as the major government component in the NMM; and (4) the creation of the Special Task Force of the DOJ, which has already started its work, with the mandate to review all unresolved cases of extrajudicial killings and enforced disappearances. ***The Committee requests the Government to provide information on the operation of this monitoring mechanism.***

The Committee further notes the Government’s reply to the ITUC’s 2011 comments referring to certain violations of trade union rights in 2010, including the alleged killing of three trade union leaders (Eduard Panganiban, elected Secretary of the United Strength of Workers in Takata; Benjamin Bayles, organizer of the National Federation of Sugar Workers; and Carlo “Caloy” Rodriguez, President of the Calamba Water District Union), as well as arrests and false criminal charges filed against trade union leaders and physical assaults of striking workers. In particular, the Committee notes the Government’s observations that, according to the NTIPC Monitoring Body, the three cases of alleged extrajudicial killings are being monitored by the Regional Tripartite Monitoring Bodies and the other seven cases of alleged violation of trade union rights were all classified as possibly labour-related and taken cognizance of by the NTIPC Monitoring Body. ***The Committee hopes that the investigations of these serious allegations will be finalized in the near future with a view to establishing the facts, determining responsibilities and punishing the perpetrators, and requests the Government to provide information on any developments in this regard.***

The Committee notes a communication from the ITUC dated 31 July 2012, in which it provides its comments on the application of the Convention in law and in practice. The Committee also notes that the ITUC refers to legislative issues already raised by the Committee, and alleges continuing violations of trade union rights in 2011, including alleged killings of four trade union leaders (Celito Baccay, board member of the Maeno-Giken Workers’ Organization; Noriel Salazar, President of the Union of COCOHEM; Santos V. Manrique, President of the Boringot Small-scale Miners’ Cooperative and Chairperson of the Federation of Miners Aggrupation; and Elpidio Malinao, Vice-President of the University of the Philippines (UP) Los Banos Chapter of the Organization of Non-Academic Personnel of UP); abduction and arbitrary detention of Elizar Nabas, member of the National Federation of Sugar Workers; and continuing harassment of Remigio Saladero Jr., chief legal counsel of the Kilusang Mayo Uno (KMU). ***The Committee requests the Government to provide its observations on these serious allegations.***

### **Civil liberties and trade union rights**

*Human Security Act.* The Committee had previously requested the Government to provide information concerning the impact of the Human Security Act on 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 that the Government reiterates that 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. Moreover, based on the inventory of cases of the NTIPC Monitoring Body, there appears to be no case involving trade union leaders or members where such abuse has been raised with respect



to its implementation. The Committee also notes the concern expressed by the ITUC that the broad language of the Act leaves it open to abuse against trade unionists by local police and judicial authorities. ***The Committee trusts that the Government will take all necessary steps to ensure that this Act will not be misused to suppress legitimate trade union activities.***

### Legislative issues

***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 there are currently three bills being prioritized, which seek to amend the Labor Code, and that the NTIPC agreed to constitute the Tripartite Labor Code Review Team (two sector-nominated experts each), which was formed on 12 September 2011 as the external partner in the drafting process. 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 workers 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 Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee notes with ***interest*** that, while again invoking the principle of reciprocity, the Government refers to House Bill No. 894, which is currently pending with the Committee on Labor and Employment of the House of Congress and is entitled: An Act Allowing Aliens to Exercise Their Right to Self-Organization and Withdrawing Regulation of Foreign Assistance to Trade Unions, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines. The said Bill aims, inter alia, to extend the right to self-organization to aliens in the Philippines. The Government states that this issue is also a subject for consultation relative to the proposed amendments to Department Order No. 40-03. ***The Committee hopes that the above Bill and any other provisions enabling all workers legally residing in the country to enjoy the trade union rights provided by the Convention will be adopted in the near future. It requests the Government to provide information in its next report on any progress made in this respect.***

The Committee recalls that it had previously requested the Government to take the necessary measures to amend section 234(c) of the Labor Code so as to lower the excessive minimum membership requirement for forming an independent union. The Committee notes with ***interest*** the Government's indication that one of the labour bills that is presently being prioritized is an NTIPC-endorsed legislative proposal, entitled: Union Registration Bill or An Act Further Strengthening Workers' Right to Self-Organization (House Bill No. 5927), which seeks to amend, inter alia, section 234 of the Labor Code, by removing the 20 per cent minimum membership requirement for registration of independent labour organizations, consistent with the Convention. The Bill is now pending with the Committee on Rules of the House of Congress and was reported out for a second reading, whereas its counterpart Bill (Senate Bill No. 2838) is now pending with the Senate Committee on Labor. ***The Committee hopes that the above Bill removing the 20 per cent minimum membership requirement for establishing an independent workers' organization will be adopted in the near future. It 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 administration and activities and to formulate their programmes without interference by the public authorities.*** The Committee had previously requested the Government to take the necessary measures to amend section 263(g) of the Labor Code and Department Order No. 40-G-03 so as to limit governmental intervention resulting in compulsory arbitration to essential services in the strict sense of the term. The Committee notes that the Government states in its report that: (1) under Department Order No. 40-G-03, the Secretary of Labor initiates, at the first instance, *motu proprio* or upon request by either party to the labour dispute, an intensive conciliation–mediation before the Conciliation and Mediation Office under the Office of the Secretary (created to operationalize the conciliation–mediation at the level of the Secretary of Labor in case the conciliation–mediation before the National Conciliation and Mediation Board failed); (2) the limited recourse to section 263(g) (statistics provided by the Government) is a result of the extensive use of alternative dispute resolution through conciliation–mediation before and after the filing of petition for assumption of jurisdiction by either or both parties, thus indicating the strong political will of the Secretary of Labor not to use the power arbitrarily; (3) in an effort to align the country's labour laws to the provisions of the Convention, the Assumption of Jurisdiction Bill (An Act Strengthening Workers' Rights to Peaceful Concerted Activities) seeks to amend, inter alia, section 263 of the Labor Code, so as to limit the automatic issuance of assumption of jurisdiction order by using the “essential services” criterion as a guidepost, whereby the list of industries to be classified as “essential services” shall be determined through tripartite consultation; and (4) the said legislative measure (House Bill No. 5933) is now pending with the House of Congress Committee on Labor and Employment. Its counterpart Bill in the Senate is Senate Bill No. 3210 which is pending for a second reading. ***The Committee expresses the firm hope that the adopted Bill will be in full conformity with freedom of association principles related to this matter, and requests the Government to indicate any progress made in this respect.***

The Committee had previously requested the Government to amend sections 264(a) and 272(a) of the Labor Code, which provided for 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, in an effort to align the country's labour laws to the provisions of the Convention, the Assumption of Jurisdiction Bill (An Act Strengthening Workers' Rights to Peaceful Concerted Activities), seeks to amend sections 264 and 272 of the Labor Code by providing that no criminal prosecution under section 264 may be instituted without a final judgment that an illegal strike or lockout has been committed. The Bill (House Bill No. 5933) is now pending with the House Committee on Labor and Employment. The Committee recalls that no penal sanctions should be imposed against a worker for having carried out a peaceful strike, and therefore that measures of imprisonment or fines 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 penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts. ***The Committee expresses the firm hope that sections 264(a) and 272(a) of the Labor Code will be amended in the near future taking into account the mentioned principles.***

***Right of workers' organizations to organize their administration.*** The Committee 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 noted the Government's indication that a Bill was currently in preparation that repealed that requirement. The Committee notes that the Government again refers to a Bill (House Bill No. 894), which is currently pending with the House Committee on Labor and Employment and is entitled: An Act Allowing Aliens to Exercise Their Right to Self-Organization and Withdrawing Regulation of Foreign Assistance to Trade Unions, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines. The said Bill aims, inter alia, to withdraw both the prohibition of foreign trade union organizations to engage in trade union activities and the regulation of foreign assistance to Philippine trade unions. ***The Committee hopes that the Bill removing the need for Government permission for foreign assistance to trade unions will be adopted in the near future. It requests the Government to provide information in its next report on any progress made in this regard.***

***Article 5. Right of organizations to establish federations and confederations.*** The Committee previously requested the Government to take the necessary measures in order to lower the excessively high requirement of ten union members for the registration of federations or national unions set out in section 237(a) of the Labor Code. The Committee notes with ***interest*** the Government's indication that the NTIPC-endorsed legislative proposal entitled: Union Registration Bill or An Act Further Strengthening Workers' Right to Self-Organization, also seeks to amend section 237 of the Labor Code, by reducing the required ten local unions to five for the registration of federations, consistent with the Convention, and that House Bill No. 5927 is now pending with the House Committee on Rules and was reported out for a second reading. ***The Committee hopes that the above Bill lowering the excessively high requirement for registration of federations or national unions set out in section 237(a) of the Labor Code will be adopted in the near future. It requests the Government to provide information in its next report on any developments in this respect.***

Lastly, the Committee previously hoped 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 notes from the Government's report that the prioritization of relevant labour reform bills is being worked on, and that, pursuant to the Presidential Directive to align the country's labour policies with international treaties and ILO Conventions in a sound and realistic manner, an orientation on international labour standards and current legislative reforms towards Philippine compliance was conducted on 17 July 2012 for members of the DOLE Technical Committee on Legislative Matters and technical assistants of legislators. ***The Committee once again expresses the firm hope that the undertaken legislative reform will bring the aforementioned legislative provisions into full conformity with the Convention. It requests the Government to provide in its next report information on the outcome of this reform and copies of the relevant legislative texts once adopted.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1953)***

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) on 4 August 2011, alleging anti-union dismissals and acts of anti-union interference on the part of the employer, as well as the Government's observations thereon, in particular that the relevant cases reported by the ITUC were all classified as possibly labour-related and taken cognizance of by the National Tripartite Industrial Peace Council (NTIPC) Monitoring Body. ***The Committee requests the Government to provide in its next report information on any developments in this regard.***

The Committee further notes the communication dated 31 July 2012 from the ITUC in which it provides its comments on the application of the Convention in law and in practice and refers to certain violations of trade union rights in 2011, including alleged acts of anti-union discrimination and anti-union interference on the part of the employer. ***The Committee requests the Government to provide its observations on these allegations.***

***Articles 1, 2 and 3 of the Convention. Protection against acts of anti-union discrimination and interference.*** The Committee notes the Government's observations on the comments submitted by the ITUC in 2010 and previous years on the alleged anti-union practices, acts of anti-union discrimination including dismissals, and employer interference, as well as cases of replacement of trade unions by non-independent company unions, dismissals and blacklisting of activists and other anti-union tactics in export processing zones (EPZs) and other special economic zones. In particular, it notes with

*interest* that the Government reports the following positive measures: (i) the submission of the ITUC allegations to the NTIPC Monitoring Body and the information provided concerning the NTIPC's activity since its establishment; (ii) the creation of a tripartite team for an enterprise in the electronics sector (TTCEC) from among the members of the TIPC Monitoring Body with the mandate to conduct plant-level verification of the parties' claims and make recommendations to the TIPC Monitoring Body; and the management's willingness to negotiate with the union; (iii) the establishment of a tripartite team for an enterprise in the automobile sector (TTTAPI) to conduct plant-level verification of the parties' claims; and (iv) the classification by the NTIPC Monitoring Body as labour-related of 17 cases of alleged trade union rights violations in EPZs and their referral to the concerned agencies for immediate resolution. ***The Committee trusts that the Government will continue to take steps to ensure that the above allegations of acts of anti-union discrimination and interference, including in EPZs, are expeditiously examined and, if need be, appropriate measures of redress are taken and sufficiently dissuasive sanctions imposed, so as to ensure the effective protection of the right to organize. It requests the Government to continue to provide information concerning any developments in this regard.***

Concerning the strengthening in practice of the protection available against acts of anti-union discrimination and interference, with special emphasis on EPZs and special economic zones, the Committee notes that the Government indicates in its report that, for the purpose of enforcing labour laws and the rights of workers to organize and bargain collectively, especially in EPZs, the Department of Labor and Employment (DOLE) has combined its routine inspection function with developmental approaches through the DOLE Kapatiran WISE-TAV Program, which seeks to ensure compliance in supply chains, and the Incentivizing Compliance Program or Tripartite Certification of Labor Laws Compliance, which consists of several tripartite certification hurdles, including the Tripartite Certification for Labor Standards Compliance and the Tripartite Certification for Industrial Peace, before the Tripartite Seal of Excellence can be achieved. The Government adds that DOLE and the Philippine Economic Zone Authority (PEZA) agreed to include all public zones in the Kapatiran and Incentivizing Programs, and ensure the continuous implementation of the 2006 DOLE-PEZA Memorandum of Agreement on labour-management education, joint inspection and conciliation–mediation in ensuring industrial peace. Furthermore, both DOLE and PEZA are part of the Verite Multi-Stakeholder Initiative, which started in 2010 and is currently being pilot tested through conduct of social audits in select garment and electronics firms inside the economic zones covering freedom of association, labour standards and occupational health and safety standards. The Committee also notes the national plan of action 2012–13 towards full freedom of association and collective bargaining rights in EPZs concluded by the Government (including DOLE and PEZA) and representatives of national federations of workers' organizations, which seeks to take steps to achieve improved compliance with the relevant ILO Conventions. ***The Committee welcomes this information and requests the Government to continue to provide information concerning any legislative or other initiatives taken or envisaged to 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.***

Lastly, the Committee notes the copy of the Standard Employment Contract used by the Philippines Overseas Employment Administration (POEA), provided by the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee notes with *concern* that, under item 14(a) of the current POEA Standard Employment Contract, engaging in trade union activities constitutes a ground for termination of the contract. ***The Committee requests the Government to take all necessary measures to delete the engagement in trade union activities from the list of grounds for termination in item 14(a) of the POEA Standard Employment Contract. It further requests the Government to provide an estimate of the number of workers governed by this sample contract.***

*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 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 requested the Government to provide 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.

The Committee notes the information provided by the Government in its report, in particular that the Government indicates that public sector employees not engaged in the administration of the State are afforded the right to self-organize, and that a registered government employees' organization may negotiate, on behalf of the members of the negotiating unit, terms and conditions of employment, provided that it is able to secure an accreditation from the Civil Service Commission (CSC) as sole and exclusive negotiating agent for a particular negotiating unit (i.e. constitutional bodies and their regional offices; the executive department, including services and staff bureaux and regional offices; line bureaux and their regional offices; attached agencies; the legislature; the judiciary; state universities and colleges; government-owned and controlled corporations with original charters; and provinces, cities and municipalities). The following may be subject of negotiation: (a) schedule of vacation and other leaves; (b) personal growth and development; (c) communication system-internal (lateral and vertical), external; (d) work assignment/reassignment/detail/transfer; (e) distribution of workload; (f) provision for protection and safety; (g) provision for facilities for handicapped personnel; (h) provision for

first aid medical services and supply; (i) physical fitness programme; (j) provision for family planning services for married women; (k) annual medical/physical examination; (l) recreational, social, athletic and cultural activities and facilities; (m) CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003; and (n) such other concerns which are not prohibited by law and CSC rules and regulations.

The Committee notes that the subjects covered by collective bargaining do not appear to include such important aspects of conditions of work as wages, benefits and allowances, and working time. The Committee recalls in this connection that section 276 of the Labor Code provides 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. Noting that the ITUC, in its most recent communication, confirms these restrictions on bargaining rights in the public sector, the Committee recalls 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 therefore requests the Government to take the necessary legislative or other measures in order to expand the subjects covered by collective bargaining, in order to ensure that public sector employees not engaged in the administration of the State fully enjoy the right to negotiate their terms and conditions of employment, including wages, benefits and allowances, in accordance with Articles 4 and 6 of the Convention. It once again requests the Government to indicate any 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), dated 4 August 2011, on the application of the Convention and the Government's reply thereon. The Committee also notes the comments of the ITUC, dated 31 July 2012, referring to issues already highlighted by the Committee, as well as to allegations linked to the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Finally, the Committee notes the comments from the National Commission of the Independent and Self-Governing Trade Union (NSZZ) "Solidarnosc", dated 30 August 2012, referring to the application of the Convention and in particular to Case No. 2888 examined by the Committee on Freedom of Association.

***Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join trade unions of their own choosing.*** In its previous comments, the Committee took note of the information provided by the Government and of the comments by the ITUC alleging that workers in state-owned enterprises in the health sector, as well as in the 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 also noted that, according to the Government, the right to form and join trade unions was not granted to those persons who had entered into an employment relationship on the basis of civil law contract, since they could not be considered employees under section 2 of the Labour Code. The Committee recalled 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. It requested the Government to provide information on any measures taken or envisaged to amend its legislation so as to bring it into conformity with the Convention. The Committee notes that the Committee on Freedom of Association, when examining a complaint submitted by the National Commission of the NSZZ "Solidarnosc", also requested the Government to take the necessary measures to ensure that all workers, without distinction whatsoever, including self-employed workers and those employed under civil law contracts, enjoyed the right to establish and join organizations of their own choosing within the meaning of the Convention (see 363rd report of the Committee, Case No. 2888). The Committee notes that the Government indicates in its report that: (1) the Ministry of Labour and Social Policy has prepared a draft law amending the Act on trade unions, which provides for the extension of the right to form trade unions to outworkers (according to the Government, these workers can only join trade unions); (2) the Tripartite Committee for Socio-economic Affairs decided in June 2012 to start an in-depth discussion on the problem of people working on the basis of civil law contracts, including their right to organize in trade unions; (3) this issue will be addressed at the forum of problem groups of the Tripartite Committee for Socio-economic Dialogue; and (4) there will also be a wider discussion within the framework of the Tripartite Commission on changes in national legislation on the right to organize and it will examine, inter alia, the possibility of extending the right to organize to self-employed people. ***The Committee welcomes the initiatives on potential improvements to the legislation and hopes that any legislative reform will take account of the abovementioned principles. The Committee requests the Government to provide information in its next report on any progress made in this respect.***

***Article 3. Right of organizations to elect their representatives in full freedom.*** The Committee recalls that it noted in its previous observation the entry into force of the Act on the civil service, 2008, and that according to its section 78(6), members of the civil service occupying senior positions cannot exercise trade union functions. The Committee recalls that while legislation may restrict the right of civil servants in senior positions to join unions of lower grade employees, the persons concerned should have the right to form their own organizations to defend their interests and the right to elect

representatives in full freedom; all workers in the public service should also have the right to perform trade union functions in their respective trade union organizations. The Committee notes that, according to the Government, all the necessary steps to eliminate the incompatibility with *Article 3* of the Convention will be taken at the next revision of the Act in question. ***The Committee hopes that the revision of section 78(6) of the Act on the civil service will be made in the near future and that it will take into account the principle mentioned above.***

*Right of organizations to organize their activities in full freedom and to formulate their programmes.* The Committee recalls that in its previous comments, it requested the Government to specify categories of employees whose right to strike was restricted and to provide information on the practical application of the right to strike by such employees. The Committee notes that, according to the Government, section 78(3) of the Act on the civil service forbids public servants to participate in a strike or industrial action interfering with the normal functioning of the office. In this respect, the Committee recalls that public servants who do not exercise authority on behalf of the State must be able to exercise the right to strike. ***The Committee trusts that in the context of the revision of the Act on the civil service, to which the Government refers in the previous paragraph, the necessary measures will be taken to acknowledge the abovementioned principle.***

### ***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) sent on 4 August 2011 and 31 July 2012. The Committee also notes the Government's reply to some of the observations made by the ITUC. Similarly, the Committee takes note of the reply from the Polish Confederation of Private Employers (LEWIATAN), dated 3 November 2011, to the ITUC's allegations on the refusal of an enterprise to negotiate improvements in employment conditions, and in particular its statement that the crisis – which started after the agreement had been concluded in 2008 – had had drastic repercussions on the economic situation of enterprises; in September 2011, all the enterprise's shares were sold. ***The Committee requests the Government to send its observations in connection with the ITUC's comments made in 2012 on anti-union dismissals in various sectors of activity.*** The Committee also notes the comments from the National Commission of the Independent and Self-Governing Trade Union (NSZZ) "Solidarnosc" on matters already highlighted by the Committee.

*Article 1 of the Convention. Protection against anti-union discrimination.* In its previous observation, the Committee noted the allegations of inefficiency of the proceedings and sanctions established in the legislation, and urged the Government to take the necessary measures to ensure the effective application of the legal sanctions for all cases of anti-union discrimination. The Committee also requested the Government to continue providing information on the number of complaints for anti-union discrimination, the average duration of the proceedings and the outcome of these proceedings. The Committee notes that the Government states as follows: (1) section 38 of the Labour Code contains the obligation to consult with the trade union concerned before the termination of an employment contract; (2) section 18 of the Labour Code stipulates the principle of non-discrimination in employment on grounds of trade union membership and provides for compensation for damages incurred; (3) section 45(1) stipulates that in the event of an unjustified termination of the employment relationship the employee may demand reinstatement with the same conditions as before; (4) freedom of association is protected under article 59(1) of the Constitution and any violation of this right is subject to criminal liability (section 218(1) of the Penal Code and section 35(1) of the 1991 Act on trade unions).

The Committee also notes the Government's information on the following: (1) in 2010, there were 244 complaints lodged for the violation of the principle of special protection for members of trade unions; 20 per cent of the cases were dismissed; 15 per cent were discontinued due to a settlement or withdrawal of the claim; and, to date, only two cases are pending before the judicial authority; (2) as regards the allegation of the excessive length of proceedings in labour matters, out of 63,417 cases submitted to district courts in 2010, 47.4 per cent were completed within a period of three months and 72.5 per cent within six months; less than 10 per cent of the total number of cases were pending for more than 12 months and, of these, only 1.7 per cent of cases were pending for more than two years; (3) there were 35 cases of criminal proceedings related to the violation of the principle of association in 2010, of which 14 were pending in April 2011, 12 persons were convicted, two were acquitted and proceedings against eight people were discontinued. The Committee takes due note of all this information and emphasizes the high number of complaints concerning anti-union practices. ***The Committee requests the Government to submit in its next report statistics on the number of new cases concerning anti-union practices brought before the courts.***

*Compensation for anti-union dismissal.* The Committee had noted that, according to the ITUC, victims of anti-union dismissals could ask for reinstatement, but court proceedings could take up to two years. In this respect, the Committee notes the information provided by the Government, to which it referred in the previous paragraph, concerning the procedural deadlines for dealing with complaints for violations of trade union rights. Similarly, the Committee notes that the Government refers once again to a possible legislative reform that would introduce an amendment to the Code of Civil Procedure giving the judicial authority the possibility, in cases of termination of an employment relationship in which there are allegations of anti-union discrimination, of granting the right for the persons concerned to remain in their jobs during the proceedings. ***The Committee requests the Government to provide information in its next report of any initiative to amend the legislation in this respect.***

## Portugal

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

The Committee notes the Government's reply to the comments from: (1) the General Workers' Union (UGT) and the General Confederation of Portuguese Workers (CGTP) – annexed to the Government's report; (2) the International Trade Union Confederation (ITUC) of 24 August 2010 and 4 August 2011; and (3) the Confederation of Portuguese Tourism (CTP), received on 22 September 2010. The Committee also notes, in connection with various comments made by the ITUC on 31 July 2012, that the Government requested further clarification to be able to send relevant observations (the Office wrote to the Government in this respect).

*Article 4 of the Convention. Legal matters pending. Compulsory arbitration.* In its previous comment, the Committee noted 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 Standing Committee for Social Partnership (CPCS). The Committee requested the Government to look into the possibility of amending the section in question so as to preclude the decision to impose compulsory arbitration from being taken by employers' and workers' organizations that are not parties to the dispute. In this respect, the Committee notes the Government's statement that it is not the workers' and employers' associations that impose compulsory arbitration. The fact that arbitration is recommended by the majority of representatives of the workers and employers, provided for under the section in question, is not binding, given that the decision to resort to compulsory arbitration does not arise out of the recommendation. Under section 509(1) of the Labour Code, recourse to compulsory arbitration is determined by an informed decision of the minister responsible for labour matters, taking into account the number of employers and workers affected by the dispute, the social protection of the workers concerned, the social and economic repercussions of the dispute and the position of the parties with respect to arbitration. The Committee recalls that any provisions stipulating that the authority might resort to arbitration in the event of parties to collective bargaining failing to reach agreement are not usually in compliance with the principle of voluntary negotiation contained in *Article 4* of the Convention and that compulsory arbitration is only acceptable in the case of acute national or local crisis. ***The Committee requests the Government to take the necessary measures to guarantee the respect of the abovementioned principle.***

*Representativeness of organizations.* The Committee had noted the conclusions of the Committee on Freedom of Association in Case No. 2334 which mentioned that the legislation: (1) cites by name the trade union 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 employers' and workers' organizations. The Committee had requested the Government, in consultation with the most representative organizations of employers and workers, 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 section 9 of Act No. 108/91 of the CES 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 had noted the information sent by the Government to the effect that: (1) the president of the CES had taken the initiative of launching a general discussion on the composition of the CES with the cooperation of members; and (2) it was impossible to forecast the outcome of these discussions or the proposals and recommendations the president might make. The Committee notes that, according to the Government, there has been no change in this area. ***The Committee requests the Government once again to take the necessary measures to work out and lay down objective, precise and predetermined criteria to evaluate the representativeness and independence of employers' and workers' organizations that are part of the CES and the CPCS, and to amend section 9 of Act No. 108/91 of the Economic and Social Council on the lines it has proposed.***

Furthermore, the Committee notes the CGTP's statement, in connection with the impact of the financial crisis on the trade unions, that Act No. 23/2012 of 25 June 2012 amends a number of sections of the Labour Code. It entered into effect on 1 August 2012 and cut pay and cash benefits in the state enterprises, even when these had been applied under collective agreement. The Government explained that the cut applied to salaries exceeding €1,500 and was an attempt to consolidate the state finances in the prevailing economic crisis; this salary reduction was declared constitutional by the Constitutional Court. The Committee would like to stress, in general, the importance it attaches to full compliance with collective agreements in force and, taking into account the Government's statements concerning the economic crisis, would like to refer to the principles in its General Survey of this year on this matter. Finally, a number of trade union organizations complain about the reduction in the number of collective agreements. The Committee notes that the Government connects this fact with the economic crisis.

## Romania

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

*Observations of workers' organizations.* The Committee notes the Government's reply to the comments made by the Block of National Trade Unions (BNS) in a communication dated 1 September 2010. Furthermore, it notes the Government's observations on the comments submitted by: (1) the Federation of National Education (FEN) in a communication dated 25 May 2011; (2) the National Trade Union Confederation (CNS "Cartel Alfa") jointly with the BNS in a communication received on 10 June 2011; (3) the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011; (4) the ITUC in a communication dated 31 July 2012; and (5) the CNS "Cartel Alfa" in a communication received on 30 August 2012. It also notes the comments of the Confederation of Democratic Trade Unions of Romania (CSDR) submitted with the Government's report dated 31 August 2012. **The Committee requests the Government to provide more detailed information concerning the following matters raised by the workers' organizations: non-resolution of the issue of division of trade union assets; procedures of registration of unions and modification of union statutes or executive committees lasting in practice several months; and procedures instituted by the National Agency for Integrity (ANI) against Bogdan Hossu, President of CNS "Cartel Alfa".**

*Legislative matters.* In its previous comments, the Committee had been commenting upon several sections of Act No. 168/1999 on the settlement of labour conflicts, Act No. 54/2003 on trade unions and the Labour Code. The Committee had noted the Government's indication that these pieces of legislation were being revised. The Committee hoped that in the context of the abovementioned legislative review, due account would be taken of the need to amend the relevant provisions to ensure that: (1) minors have the right to join unions without parental authorization as soon as they are authorized to work; (2) all public servants with the sole possible exceptions found in *Article 9 of the Convention*, have the right to organize; (3) workers exercising more than one occupational activity have the right to establish and join more than one organization of their own choosing; (4) the procedure for registration is simplified and the requirement of prior approval for amendments to trade union by-laws is removed; (5) the circumstances and conditions under which the assets of a union may be subject to liquidation are brought into conformity with Convention; (6) the powers afforded to public authorities in terms of control over the economic and financial activity of unions are limited to the obligation of submitting periodic reports or cases of complaints; (7) compulsory arbitration may only be imposed in essential services in the strict sense of the term, for public servants exercising authority in the name of the State or in cases of national or local crisis; and (8) minimum services are negotiated by the social partners concerned and, in the absence of agreement between the parties, determined by an independent body.

The Committee notes that the Government indicates in its report that Act No. 62 of 2011 concerning Social Dialogue (Social Dialogue Act) abrogates Act No. 168 of 1999 on the settlement of labour disputes and Act No. 54 of 2003 on trade unions; and that Act No. 40 of 2011 substantially amends the Labour Code. The Committee notes with *satisfaction* that the following issues raised previously have been resolved through the adoption of the Social Dialogue Act: right of minors who are authorized to work to join unions without parental authorization (section 3(5)); right of workers exercising more than one occupational activity to establish and join more than one organization (section 3(4)); simplified union registration procedure and no prior authority approval for amendments to union by-laws (sections 14–20); no liquidation of union assets for debts payment to the State (sections 21–26); and compulsory arbitration only at the request of both parties (sections 179 and 180).

The Committee notes, however, that certain issues previously raised are still pending after the adoption of the Social Dialogue Act (denial of the right to organize to certain categories of public servants (section 4); excessive control of trade union finances (section 26(2)); and minimum services set by law (section 205)). The Committee also notes a number of additional discrepancies between the provisions of the Social Dialogue Act and the Convention in terms of scope of application (such as self-employed, apprentices, dismissed or retired workers), eligibility conditions for trade union officials, restriction of trade union activities (prohibition of activities with political character), etc.

In this respect, the Committee notes that the Government has recently benefitted from ILO technical assistance seeking to ensure the conformity with the Convention of a draft Emergency Ordinance which substantially amends the Social Dialogue Act. **The Committee trusts that the Government will take due account of its comments in the context of this legislative review and that the new legislation will be in full conformity with the Convention. The Committee requests the Government to indicate in its next report any developments 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: 1958)**

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)**

In its previous observation, the Committee noted the debate which took place within the Conference Committee in June 2011 and welcomed the Government's commitment to continue to avail itself of ILO technical assistance. The

Committee had also noted the adoption of: (i) Act No. 62 of 2011 concerning Social Dialogue (Social Dialogue Act), which abrogated Act No. 130 of 1996 on collective agreements, Act No. 168 of 1999 on the settlement of labour conflicts, Act No. 356 of 2001 concerning employers' organizations and Act No. 54 of 2003 on trade unions; and (ii) Act No. 40 of 2011, which substantially amended the Labour Code.

The Committee notes the Government's reply to the comments submitted by: (i) the Federation of Free Trade Unions of the Chemical and Petrochemical Industries (FSLCP) in a communication dated 5 June 2012; and (ii) the International Trade Union Confederation (ITUC) in a communication dated 31 July 2012.

*Articles 1, 2 and 3 of the Convention. Effective protection against acts of anti-union discrimination and interference. Sanctions prescribed for acts of anti-union discrimination.* In its previous observation, noting that sections 10 of the Social Dialogue Act and 220(2) of the Labour Code prohibited acts of anti-union discrimination but that the new legislation did not seem to foresee sanctions in the case of their violation, the Committee had requested the Government to clarify this point. The Committee notes that the Government confirms that the Social Dialogue Act and the Labour Code as amended do not contain sanctions for acts of anti-union discrimination but indicates that sanctions for anti-union dismissals are provided for in the general law such as in Government Ordinance No. 137 of 2000 concerning the prevention and sanctioning of all forms of discrimination. The Committee notes that the mentioned Ordinance contains provisions prohibiting and sanctioning discrimination on the grounds of race, nationality, religion, social origin, HIV, refugee status, conviction, age, sex or sexual orientation, as regards the entry into employment, modification or termination of the employment contract, etc. Noting that union affiliation or the engagement in legitimate trade union activities does not constitute a ground for discrimination under the Ordinance, the Committee recalls that the existence of general legal provisions prohibiting acts of anti-union discrimination (such as section 10 of the Social Dialogue Act and section 220(2) of the Labour Code) is not enough if these provisions are not accompanied by effective and rapid procedures to ensure their application in practice. ***The Committee requests the Government to indicate the general legal provisions, which, according to the Government sanction acts of anti-union discrimination or, if need be, to take the necessary measures to guarantee full protection against acts of anti-union discrimination including by imposing sufficiently dissuasive sanctions.***

*Sanctions in practice for acts of anti-union discrimination or interference.* Furthermore, the Committee had previously noted that, according to the ITUC, sanctions for anti-union activities are rarely imposed in practice due to loopholes in the Penal Code, and that the complaint procedure is too complicated. The Committee notes that the Government provides statistical information on sanctions imposed by labour inspection pursuant to section 217(1)(b) of the Social Dialogue Act, which concerns the refusal to bargain collectively (whereas acts of interference are sanctioned pursuant to section 217(1)(a)). The Committee recalls that the refusal to bargain collectively does not constitute an act of anti-union discrimination or interference. ***The Committee once again requests the Government to provide in its next report statistical information, or at least the maximum information available, on the number of cases of anti-union discrimination and interference brought to the competent authorities, the average duration of the relevant proceedings and their outcome, as well as the sanctions and remedial measures applied in such cases.***

*Tripartite meeting regarding recent anti-union practices.* In its previous comments, the Committee had noted from the comments of the ITUC and the BNS the occurrence in recent years of certain anti-union practices such as making employment conditional upon the worker's agreement not to create or join a union or anti-union dismissals, and requested the Government to discuss this situation with the most representative organizations of workers and employers. The Committee welcomes the Government's indication that, following the formation of the new Government and the modification of the composition of the National Tripartite Council for Social Dialogue, a debate on the subject will be able to be included on the agenda of the Council, according to the priorities for action and consultation established in agreement with the social partners. ***The Committee trusts that the meeting will be organized in the very near future and requests the Government to provide information on its outcome and any agreed follow-up measures.***

*Article 4. Promotion of collective bargaining. Bargaining level.* The Committee had previously requested the Government to indicate whether the new legal provisions allow the parties, if they so wish, to negotiate and conclude, in addition to sectoral agreements, collective agreements at the national level. It had also requested the Government to communicate comparative statistics for the period 2008–12 on the coverage of collective bargaining. The Committee notes the Government's indication that: (i) the Social Dialogue Act establishes in section 128(1) the "mandatory" bargaining levels (i.e. enterprise, group of enterprises, and sector of activity as determined by the social partners), which does not prohibit collective bargaining at the national level, if the parties so decide, all the more so since the representativeness criteria at national level are already established; (ii) the national collective agreement is no longer valid due to its denunciation by the employer organization; and (iii) given that the requested comparative statistics 2008–12 would not be of relevance because 2012 is a period of transition necessary for the adaptation to the new legal provisions, statistical data is provided only concerning the 2012 collective agreements at the level of sector of activity and groups of enterprises. The Committee notes the information provided by the Government but observes that the information on the sectoral collective agreements in force in 2012 was not attached to the report. The Committee notes with ***concern*** that the Government indicates, in a recent request for ILO technical assistance with regard to a draft Emergency Ordinance which substantially amends the Social Dialogue Act, that one of the consequences of the Social Dialogue Act was a drastic decrease in the number of collective agreements concluded at the enterprise level and at the level of sector of activity (due to delay in the



determination of the sectors of activity by the social partners). *The Committee requests the Government to provide detailed information on any developments in regard to this decrease and to communicate comparative and other statistics on the coverage of collective bargaining.*

*Criteria of representativeness.* The Committee had previously noted the representativeness criteria at enterprise level set out in section 51 of the Social Dialogue Act (union membership of at least 50 per cent plus one of the workers of the enterprise) and, recalling that if no union secures the absolute majority, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members, it had requested the Government to amend the legislation in order to ensure respect for this principle. The Committee notes that, according to the Government, if no trade union attains the majority to be recognized as bargaining agent, the “representatives designated by the employees” become the legitimate partners, which includes the representatives of the trade unions existing at enterprise level and the representatives elected by the workers. While noting this information, the Committee observes that, according to section 135(1): (i) in enterprises without a trade union meeting the representativeness criteria, if an enterprise-level union exists and is affiliated to a federation meeting the representativeness criteria in the relevant sector of activity, the negotiation of a collective agreement will be carried out by the representatives of that federation together with the elected workers’ representatives; and (ii) in enterprises without a trade union meeting the representativeness criteria, if an enterprise-level union exists but is not affiliated to a federation meeting the representativeness criteria in the relevant sector of activity, the negotiation of a collective agreement will be carried out by the elected workers’ representatives. Recalling the principle enunciated above, the Committee underlines that the affiliation to a representative federation should not be required for being able to negotiate at enterprise level. It further emphasizes that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. *The Committee requests the Government to amend the relevant legislation in order to guarantee the application of these principles.*

*Collective bargaining in the public sector.* In its previous comments, the Committee had noted 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. It had also noted that the salary rights in the budget sector were presently established by Act No. 284/2010 on Unitary Salaries of the Staff Paid from Public Funds, which abrogated Act No. 330/2009 and continued to stipulate that the fixation of salaries in the public budget sector is exclusively by law (section 3(b)) and that no salaries or other pecuniary entitlements exceeding the provisions of this law can be negotiated through collective agreements (section 37(1)). The Committee had requested the Government to take the necessary measures to bring national law and practice into conformity with the Convention to ensure that wages and pecuniary entitlements are included in the scope of collective bargaining for the public service workers covered by the Convention.

The Committee notes the information provided by the Government, in particular that Act No. 284/2010 is in line with the Government’s wage policy in the public sector, the protocol concluded with the social partners in 2008 and the provisions of the financial agreements of the country with the International Monetary Fund concerning the general budget for personnel expenses in the framework of the consolidated State budget. It further notes that the Government refers to Government Decision No. 833 of 2007 and section 138 of the Social Dialogue Act. In this context, the Committee welcomes the Government’s indication that measures are being taken towards the progressive increase of the salaries of staff paid from public funds that had been reduced by 25 per cent in 2010.

The Committee welcomes in particular section 138(4) of the Social Dialogue Act, according to which, while wages in the public sector are fixed by law within specific limits that cannot be the subject of negotiations nor modified by collective agreements, in cases where wage entitlements are established in special laws between minimum and maximum limits, the concrete wages are determined by collective bargaining, within the legal limits. *Considering that this provision may be compatible with the Convention, depending on the practical application, the Committee requests the Government to indicate the categories of public servants for which the wage entitlements are established in special laws between minimum and maximum limits so that the concrete wages are determined by collective bargaining within those limits. For the remaining categories of public servants, while taking into consideration the Government’s statements concerning Act No. 284/2010, the Committee requests the Government to take the necessary measures in full consultation with the social partners and, if necessary, with technical assistance from the Office, to bring national law and practice into conformity with Article 4 of the Convention, so as to ensure that wages and pecuniary entitlements are included in the scope of collective bargaining for all public service workers covered by the Convention, on the understanding that upper and lower limits may be set for the wage negotiations. The Committee also requests the Government to supply a copy of Government Decision 833/2007.*

*Observing that the Government has recently benefited from ILO technical assistance seeking to ensure the conformity with the Convention of a draft Emergency Ordinance which substantially amends the Social Dialogue Act, the Committee trusts that, in the context of this legislative review, the Government will take due account of the technical comments made by the Office in the framework of the technical assistance provided and will soon be in a*

*position to report progress on the issues raised by the Committee. The Committee requests the Government to supply in its next report a copy of the Social Dialogue Act as amended by the Emergency Ordinance.*

Lastly, the Committee recalls that, in its conclusions, the Conference Committee had requested the Government to provide detailed information and statistics relating to the impact of the recent legislative changes on the application of the Convention. *The Committee trusts that the Government will submit the requested information in its next report.*

## Russian Federation

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

The Committee recalls that it had previously requested the Government to provide its observations on the comments made by the International Trade Union Confederation (ITUC), the Russian Labour Confederation (KTR) and the Seafarers' Union of Russia (RPSM) alleging numerous violations of trade union rights in practice, including the denial of legal personality 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 notes the Government's reply thereon. The Committee notes that an ILO mission visited the country in October 2011 in order to discuss similar issues pending before the Committee on Freedom of Association with all interested parties.

The Committee notes the comments made by the ITUC in a communication dated 31 July 2012 alleging numerous violations of trade union rights in practice, including denial of registration of trade unions, dissolution of a migrant workers' union upon a court's order and restrictions on the right to strike. *The Committee requests the Government to provide its observations thereon.*

The Committee notes that the Government's report for the current reporting cycle has not been received, however, it observes that the Labour Code has been amended.

*Article 3 of the Convention. Right of workers' and employers' organizations to organize their administration and activities. Labour Code.* The Committee recalls that it had previously requested the Government to amend section 410 of the Labour Code so as to repeal the obligation to indicate the duration of a strike in order to allow trade unions to declare strikes of unlimited duration. The Committee notes with *interest* that this provision has been amended so as to repeal this obligation.

*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. Furthermore, noting that the 2004 Law on State Civil Service prohibits civil servants from stopping their duties to solve a labour dispute, it also requested the Government to amend the relevant legislative provisions so as to ensure that public servants who do not exercise authority in the name of the State could exercise the right to strike. The Committee notes that the Government reiterates 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 considers that the restrictions imposed on the right to strike of certain categories of workers do not contradict international standards. It refers in this respect to Article 8(2) and (1)(c) 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, the police, or the administration of the State, as well as other persons, if necessary, in a democratic society in the interests of national security, public order, or for the protection of the rights and freedoms of others. The Government stresses 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 once again 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 requests once again the Government to take the necessary measures 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 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 recalls that it had previously requested the Government to provide its observations on the comments made by the International Trade Union Confederation (ITUC), the Russian Labour Confederation (KTR) and the Seafarers' Union of Russia (RPSM) 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 notes that similar allegations have been submitted by these organizations in 2011. The Committee notes that an ILO mission visited the country in October 2011, in order to discuss a complaint pending before the Committee on Freedom of Association with all interested parties. The Committee also notes the Government's report submitted in 2011.

The Committee further notes the comments made by the ITUC in a communication dated 31 July 2012 alleging new violations of the Convention in practice and referring in particular, to cases of anti-union discrimination, interference by employers in trade union internal affairs and refusal to bargain collectively. ***It requests the Government to provide its observations thereon.***

*Articles 1–3 of the Convention.* The Committee had previously noted relevant provisions of the Labour Code, Criminal Code and Code of Administrative Offences providing for sanctions which could be 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. Referring, however, to the allegations of ineffective mechanisms of protection against acts of anti-union discrimination and interference by employers in trade union internal affairs submitted by the ITUC, the Committee requested the Government to provide information on the application of these legislative provisions in practice and to indicate 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. The Committee notes that in its 2011 report, the Government once again reiterated the information it had previously provided describing the relevant applicable legislative provisions and once again stressed that the legislation contains appropriate penalties for offences concerning non-compliance with the labour legislation. The Government further indicates that there have been no recent court rulings dealing with complaints lodged by trade unions alleging anti-union discrimination.

The Committee notes, in this respect, the information contained in the report of the abovementioned mission. It notes, in particular, that according to the KTR despite the fact that the law provides for the prohibition of discrimination, protection, especially against acts of anti-union discrimination, is virtually non-existent in practice and that the bodies whose roles should be to protect trade union rights are not effective. The KTR representatives explained that the system of protection of labour rights involved three bodies: the Prosecutor's Office, courts and the labour inspectorate. The Prosecutor Office's mandate is to deal with the supervision of the application of the legislation and allegations of violations of human rights. However, according to the KTR, it often refuses to deal with the alleged violations of trade union rights considering that such violations fall outside its sphere of competence and should rather be brought to the attention of labour inspectors. Yet, the KTR informs that the labour inspectorate's position was that trade union rights are outside the scope of the labour law; thus, it was not competent to deal with the alleged violations of trade union rights. The trade unions were therefore referred to courts. According to the KTR, in the case of anti-union discrimination, this became particularly difficult as such cases were very difficult to prove; even if discrimination is established by the court, the Prosecutor's Office does not pursue the cases against employers, who refuse to reinstate or compensate a worker who had been subjected to anti-union discrimination; while the legislation provides for administrative and criminal responsibility, in practice, violations of trade union rights are not punished. The KTR representatives explained that administrative responsibility can only be engaged within two months after the lodging of a complaint; in such case, an investigation is carried out but it usually takes over two months. According to the KTR there are no cases where an employer or an official has been found criminally responsible for violating trade union rights.

The Committee further notes that representatives of the State Labour Inspectorate (Rostrud), competent to deal with violations of labour legislation, including alleged cases of discrimination, in general, and anti-union discrimination, in particular, confirmed that it is extremely difficult to prove cases of discrimination in court. They added that trade unions therefore most often file complaints with Rostrud; however, employers, having sufficient means and resources to appeal the decisions of labour inspectors in court do not hesitate to do so. They confirmed that, in practice, if a complaint is lodged with the court, the labour inspection cannot intervene. With regard to the application of penalties, Rostrud officials considered that in general, the fines are very small, to the point that some enterprises preferred to pay fines than to comply with the labour legislation.

The Committee notes the concluding remarks of the mission, which considered that further action is needed to strengthen the protection against violations of freedom of association both in law, and in practice, and that better knowledge of available procedures and further clarification of the practices would help both the social partners and the different state bodies to navigate in a context where responsibilities are not always clear. This applies in particular to the relationship between Rostrud, the Prosecutor's Office and the courts. The Committee notes that a proposal for addressing, among others, the abovementioned matters has been drafted by two trade union centres in the country – the KTR and the

Federation of Independent Trade Unions of Russia (FNPR) – and that the Government and employers’ representatives agreed that it should be examined in the framework of the Russian Tripartite Commission (RTK). The proposal refers to the need to draft specific legislative provisions with a view to render protection against violations of trade union rights, in general, and anti-union discrimination, in particular, more effective, and suggests to create a body with a specific mandate to examine cases of violations of trade union rights, including anti-union discrimination (such a mandate can also be undertaken by an existing body). The proposal also calls for training of relevant bodies and courts on freedom of association. ***The Committee requests the Government to provide information on the action taken to consider and make progress on the KTR–FNPR proposal, including the plans for ensuring the application of Articles 1 to 3 of the Convention in practice. In this respect, the Committee reminds the Government that it can avail itself of the technical cooperation of the Office if it so wishes.***

*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 ***regrets*** that no information has been provided by the Government. ***It is therefore bound to reiterate its previous request.***

*Compulsory arbitration.* The Committee recalls that it had previously noted the Government’s indication that pursuant to sections 402–404 of the Labour Code, labour arbitration can only be established upon agreement of both parties to the dispute, who also elect the arbitrators, and that the only exception to this rule is set out by section 404 (part 7) of the code. The Committee had noted that this provision referred to section 413 (parts 1 and 2) of the code, dealing with illegal strikes, and thereby imposed 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 notes that in its 2011 report, the Government indicates that together with the social partners it had drafted amendments to the Labour Code with a view to improve and increase efficiency of procedures for settling collective labour disputes. The Committee notes that the Labour Code was amended in November 2011. It understands, however, that the abovementioned provision of section 413 remained unchanged. 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. ***Noting the Government’s statement that in order to achieve compliance with international labour standards, the labour legislation is under constant review in the framework of the RTK, the Committee once again 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.***

## Rwanda

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1988)***

The Committee notes the Government’s reply to the comments made by the International Trade Union Confederation (ITUC) dated 24 August 2010. The Committee also takes note of the comments provided by the ITUC dated 31 July 2012 on the application of the Convention. ***The Committee requests the Government to provide its observations thereon.***

*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 Law No. 22/2002 of 9 July 2002, on the General Statute for the Rwanda Public Service was silent on the right of public servants to organize and to collective bargaining, although section 73 of the Law provided that public servants and the staff of public enterprises enjoyed rights and freedoms on the same basis as other citizens, the procedure for the implementation of section 73 of Law No. 22/2002 was still to be determined, and the scope of relevant provisions of the Labour Code respecting occupational organizations needed to be extended to state officials. The Committee notes that the Government indicates in its report that the Law on General Statute for Public Servants is being revised and that full legislative expression on public servants’ right to organize and to collective bargaining has been given in the draft Law. ***The Committee hopes that the Law will be adopted in the near future and requests the Government to provide a copy once it is adopted.***

*Article 3. Right of organizations to freely organize their activities and to formulate their programmes.* The Committee 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 activities. The Committee had noted that the order was being prepared and requested the Government to supply a copy of the legal text once adopted. The Committee notes that a copy of the Ministerial Order No. 04 dated 13 July 2010 has been provided. The Committee raises certain issues related to the content of this Rule in a direct request.

Finally, the Committee had noted in its previous comments that under the terms of section 124 of the Labour Code any organization requesting recognition as the most representative organization had to authorize the labour administration to check the register of its members and property. The Committee notes that the Government indicates that this requirement will be removed from the labour law. ***The Committee requests the Government to provide a copy of the legal text which repeals the requirement to check the register of property from the Labour Code.***

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: 1988)

The Committee takes note of the comments made by the International Trade Union Confederation (ITUC) in communications dated 4 August 2011 and 31 July 2012 with regard to dismissals of trade unions' representatives or affiliates and to matters previously raised by the Committee. The Committee notes the Government's response to the 2011 ITUC comments.

*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 particularly concerning the amount of legal compensation of trade union affiliates. The Committee noted that, according to the provisions of section 114 of the new Labour Law (Law 13/2009), any act which infringes the provisions providing protection against acts of discrimination and interference should constitute an offence and incur the payment of damages. In this regard the Committee requested 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 unions representatives established in article 33 of the Labour Law. The Committee notes that, according to the government report, such acts can be punished by a term of imprisonment not exceeding two months and a fine ranging from 50,000 to 300,000 Rwandan francs (RWF) (approximately between US\$80 and US\$480) (section 169 of the Labour Law). The Committee notes that the Government recognizes in its report that the Law 13/2009 does not specify the amount of damages applicable to acts of anti-union discrimination against trade union members or officials; this issue will be addressed accordingly in reviewing the Labour Code by making clear that the amount of damages provided under article 33 of the Labour Law can also apply to acts of discrimination against trade union members or officials. ***The Committee requests the Government to provide information on any developments in this regard and underlines the importance that the future version of the Labour Law applies to all acts of anti-union discrimination and interference in respect of compensation. The Committee further requests the Government to provide information on the application in practice of the sanctions established in Law 13/2009.***

*Article 4.* With reference to its previous comments concerning compulsory arbitration in the context of collective bargaining, the Committee noted that the collective bargaining dispute settlement procedure provided for in section 143 ff. of the Labour Law 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 once again 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 authorities is contrary to the principle of 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 once again 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 arbitration or 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 Labour Law provided 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/her delegate or representatives of the Administration participating as advisers. The Committee notes that, according to the Government's report, such a commission is made up of an equal number of employers' and workers' organizations so that negotiations are carried out on an equal footing and the outcome of the negotiations finally reflects the agreement of both parties, and that this provision could rather promote the negotiation of collective agreements. Nevertheless, the Committee recalls once again that such a provision may restrict the principle of free and voluntary negotiation of the parties established by the Convention. ***The Committee requests the Government to take the necessary measures to amend section 121 of the Labour Law so that the joint committee to negotiate a collective agreement operates without the presence of a representative of the labour administration.***

With regard to the question of the extension of collective agreements, the Committee in its previous observations noted that, under section 133 of the Labour Law, 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 territorial scope of the agreement. The Committee notes that, according to the Government's report, in practice the extension of a collective agreement can be possible only subject to in-depth tripartite consultations. ***The Committee requests the Government to take the necessary measures to ensure that extension of collective agreements is not done unilaterally.***

*Article 6.* In its previous observations the Committee noted that, under section 3 of the Labour Law, 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 notes that the Government indicates that the Law on the General Statute of Public Servants is being revised and will be sent shortly after it is adopted and that full legislative expression on public servants' right to organize and to collective bargaining has been provided. ***The Committee***

*hopes that the new Law on the General Statute of Public Servants will enshrine the requirements and provisions set up in the Convention for public servants other than those employed in the Administration of the State and requests the Government to send a copy of this Law upon its adoption.*

*Collective bargaining in practice.* Finally, in its previous comments, the Committee requested the Government to supply information 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 notes that, according to the Government, one collective agreement was signed on 1 January 2012 between the Congress of Labour and Brotherhood of Rwanda (COTRAV) and the Workers' Trade Union Confederation of Rwanda (CESTRAR) and, on the other hand, the Rwandan Society for Tea Production and Commercialization (SORWATHE Ltd) covering between 700 and 1,000 workers in the tea sector. The Government adds that the two abovementioned trade unions have sent their representatives to the National Labour Council. The Committee also notes that, according to the Government, the National Labour Council is a tripartite organism whose responsibilities are giving advice on bills and draft regulations concerning labour and social security, assisting in the application of laws and regulations, identifying all the shortcomings in the field of labour laws and proposing amendments, among others. ***The Committee underlines the need to further promote collective bargaining and again requests the Government to take measures in this direction and to provide information on the National Labour Council's activities in the field of collective bargaining and on the number of collective agreements concluded, including the number of workers covered.***

## 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 requested 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 recruitment, and throughout the course of employment (section 11 of the Protection of Employment Act only refers to protection against termination of employment on the grounds of union membership or participation in union activities); and
- to provide information on any development in relation to the Government's efforts to ensure that the sanctions provided for in the Protection of Employment Act (which only consist of a fine not exceeding 2,000 East Caribbean dollars (XCD) – equivalent to US\$745) be reviewed so that they constitute a sufficient deterrent against all acts of anti-union discrimination.

*Article 2. Adequate protection against acts of interference.* In its previous comments, the Committee had requested the Government to provide information on the measures taken towards the adoption of specific provisions that would expressly provide for rapid appeal procedures, coupled with effective and dissuasive sanctions, against acts of interference.

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee had requested the Government to provide information on the measures taken towards the adoption of specific provisions to explicitly recognize in legislation, and to regulate the right to bargain collectively, in conformity with the principles of the Convention.

The Committee notes that the Government indicates in its report that it is in the process of formulating a Labour Code and that it received technical assistance in this process. The Government adds that the next steps will include multipartite consultations, the amalgamation of all existing labour legislation and the upgrading of all legislation that will include all recommendations made by the Committee. ***In these circumstances, the Committee requests the Government to provide in its next report information on any developments in this regard and hopes that its comments on all the abovementioned matters will be taken into account. Moreover, the Committee requests the Government to provide a copy of the Labour Code, once adopted.***

## Saint Lucia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1980)**

*Article 2 of the Convention. Right of workers and employers to establish organizations of their own choosing. Minimum membership requirements.* In its previous comments, the Committee had requested the Government to reduce the minimum founding membership requirement for trade unions and for employers' organizations, which was set at 30 and ten, respectively (section 14 of the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999). The Committee notes with ***satisfaction*** that, with the entry into force of the Labour Act 2006 (which repeals the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999), on

1 August 2012, the minimum founding membership for a trade union and for an employers' organization has been brought down to 20 and six respectively (section 335(3) of the Labour Act 2006).

*Right of workers and employers, without distinction whatsoever, to establish and to join organizations.* For several years, noting that the “protective services” – which include the fire services and prison officers – were excluded from the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999, the Committee had requested the Government to take the necessary measures to ensure the right to organize to fire service personnel and prison staff. The Committee notes that section 325 of the Labour Act 2006 also excludes “protective services” (which according to section 2 of the Act include the fire service and the correctional services) from the scope of application of the provisions which are dealing with the right to organize in the new legislation. ***Noting that the Government indicates in its report that the issue of the right to organize fire service personnel and prison staff would be raised with the Minister of Labour, and recalling previous indications that the workers of these services benefit in practice from this right, the Committee once again requests the Government to indicate the manner in which service personnel and prison staff are assured the organizational rights provided in the Convention.***

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: 1980)**

*Articles 1, 2, 4 and 6 of the Convention.* For several years, noting that the “protective services” – which include the fire services and correctional officers – were excluded from the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999, the Committee had requested the Government to take the necessary measures in order to grant fire service personnel and correctional staff the rights and guarantees provided for in the Convention. The Committee notes that the Labour Act 2006, which entered into force on 1 August 2012, repeals the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999. It further notes that section 355 of the Labour Act 2006 also excludes “protective services” (which according to section 2 of the Act include the fire service and the correctional services) from the scope of application of the provisions which are dealing with the right to bargain collectively in the new legislation. ***Noting that the Government indicates in its report that fire service personnel and prison staff benefit in practice from the right to collective bargaining, and that the issue would be raised with the Minister of Labour, the Committee once again requests the Government to take the necessary measures to expressly grant in the legislation the right to collective bargaining to fire service personnel and correctional staff.***

## **Saint Vincent and the Grenadines**

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

*Articles 2 and 3 of the Convention.* The Committee had previously referred to the need to amend the following sections of the Trade Unions Act (TUA): section 11(3), so as to eliminate the discretionary authority of the registrar in respect of the registration of trade unions; and section 25, so as to limit the powers of the registrar to conduct investigations into the accounts of trade unions. The Committee recalls that, in its previous direct request, it had noted the Government's indication that the new Labour Bill which, as previously stated, would repeal the abovementioned sections of the TUA, was still awaiting Cabinet's approval.

The Committee notes that the Government indicates in its report that: (1) there have been some setbacks on the progress of the new Labour Relations Bill as a result of circumstances outside the control of the Department of Labour; (2) it has become necessary to review the draft Bill by way of consultations with the new leadership of the respective social partners; and (3) this process has commenced and it remains hopeful that the new Bill will be adopted in the near future.

***The Committee hopes that the new Labour Relations Bill will be adopted in the near future and will address the abovementioned issues. The Committee requests the Government to provide information in its next report on any progress made in this regard.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)**

*Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference.* In its previous comments, the Committee had requested the Government to take measures to include in the legislation provisions which provide protection against acts of anti-union discrimination and interference by the employer or employers' organizations in workers' organizations (and vice versa) and which encourage collective bargaining in the private and public sectors (with the sole possible exception of public servants engaged in the administration of the State). The Committee had noted that a new Labour Relations Bill was awaiting Cabinet's approval and that this Bill includes provisions against trade union discrimination and interference by respective employers' and workers' organizations. In this regard, the Committee recalled that the provisions should not only include protection against trade union

discrimination and interference by respective employers' and workers' organizations, but also by the employer or any person acting on behalf of that employer.

The Committee notes that the Government expresses its gratitude in its report to the ILO for providing technical comments on the Bill amending the Labour Relations Act, 2001. The Committee further notes that the Government indicates that: (1) copies of the ILO's memorandum of technical comments were submitted to the respective employers' and workers' organizations for their consideration and adoption; (2) the provisions of the revised Bill are expected to address the issues that are of concern to the ILO; and (3) it has initiated a series of consultations with the new leadership of the respective social partners.

*The Committee hopes that the revised Labour Relations Bill will address the abovementioned issues and ensure full conformity with the Convention and requests the Government to provide information in its next report on any progress made in this regard.*

## Samoa

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 2008)

*Articles 1, 2 and 4 of the Convention.* In its previous comments, the Committee noted the Government's indication that tripartite partners had drafted a new Labour and Employment Relations Bill (2010) to address all issues related to the Convention. The Committee also noted that the protection afforded was not complete in all points and requested the Government to ensure that the Bill includes:

- the prohibition of all acts of anti-union discrimination (in taking up employment, during employment, and at the time of termination of employment) as well as effective and expeditious procedures of redress and sufficiently dissuasive sanctions;
- the prohibition of all acts of interference by workers' and employers' organizations or each other's agents or members in their establishment, functioning or administration, including in particular acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations; and effective and expeditious procedures of redress and sufficiently dissuasive sanctions;
- the recognition of the right to collective bargaining of workers' and employers' organizations to all workers with the sole possible exception being the armed forces, the police and public servants engaged in the administration of the State; and
- the recognition of the principles of voluntary and free collective bargaining and the related prohibition of compulsory arbitration except in the public service (in respect of public servants engaged in the administration of the State) and in 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.

The Committee notes that the Government states in its report that the Office has provided technical inputs in relation to the Bill on Labour and Employment Relations. The Committee also notes that, according to the Government, the Bill now contains some provisions concerning protection against anti-union discrimination, good faith in collective bargaining, recognition of representative organizations and provisions on collective agreements including in relation to wages and condition of employment, relations between the parties and that other issues raised by the Committee may be addressed by regulations after the adoption of the Bill. *The Committee hopes that the Bill will soon be adopted and will take into account its pending comments. The Committee requests the Government to provide a copy of the legislation once adopted.*

## Sao Tome and Principe

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** (ratification: 1992)

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

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.*

*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.*

*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: 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:

*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.*

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

## **Senegal**

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

*Workers' organizations comments.* In its previous observation, the Committee noted the comments made by the International Trade Union Confederation (ITUC), the National Confederation of Workers of Senegal (CNTS) and the Free Workers' Union of Senegal (UTLS) referring to the intervention by the security forces during duly authorized protest marches and discriminatory practices in the recognition of unions. The ITUC also denounced the dismissals and suspensions of strikers. The Committee notes that, according to the Government, the dismissals and suspensions took place in the context of an illegal strike; the only constraints to freedom to demonstrate in the National Constitution that would justify calling in the security forces are situations in which they would have to intervene to ensure the respect of honour, the consideration of others or public order; and, finally, that the procedure for the recognition of a trade union is contingent upon the state of the file submitted and economic and fortuitous conditions, rather than constituting an act of discrimination. The Committee recalls that the right to organize union meetings is an essential element of the trade union rights of employers' and workers' organizations and that the authorities should refrain from any interference which would restrict this right or impede its legal exercise, unless the exercise of this right endangers public order in a serious and imminent manner. The Committee also recalls that workers and employers should have the right to establish the organizations that they consider appropriate in a climate of security, and any delay caused by the authorities in registering

these organizations would constitute a denial of their rights and a violation of the Convention. ***The Committee trusts that the Government will ensure the full respect of these principles in the future.***

Furthermore, the Committee notes the comments dated 31 July 2012 from the ITUC referring to the violent police repression of a general assembly of the National Postal and Telecommunications Workers Union (SNTPTS), held in front of the General Directorate in Dakar. ***The Committee requests the Government to submit its comments in reply to the allegations made by ITUC.***

***Bringing legislation into conformity with the Convention.*** In its previous comments, the Committee noted the Government's indication 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 had been taken to amend the legislation, particularly the Labour Code, with a view to ensuring full compliance with the Convention. The Committee notes that the Government's latest report reiterates its commitment to amend its legislation on a number of points. ***Given the time that has elapsed, the Committee notes with regret that no specific measure has yet been taken in this respect and urges the Government to embark upon the necessary consultations without delay with a view to taking measures allowing it to fulfil its commitment. The Committee trusts that the Government's next report will provide information on the specific measures taken to amend its legislation taking into account the following points.***

- ***Article 2 of the Convention. Trade union rights of minors.*** The need to guarantee the right to organize of minors who have reached the statutory minimum age of employment (persons of 15 years of age, according to section L.145 of the Labour Code), and who have access to the labour market 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.*** There is a 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 from the Ministry of the Interior. The Committee notes that the Government justifies these provisions once again by maintaining that it is the State's role to guarantee the security of its citizens by checking the morality and aptitude of candidates for the posts of trade union officials. The Government also refers to the possibility of lodging an appeal to the Supreme Court. The Committee recalls once again that the provisions of Act No. 76-28 of 6 April 1976, as taken up by section L.8 of the Labour Code, infringe ***Articles 2, 5 and 6*** of the Convention by granting the Minister of the Interior a discretionary power to issue a document conferring recognition of the existence of a trade union.
- ***Article 3. The right of trade union organizations to exercise their activities in full freedom and to formulate their programmes.*** The need to take without delay the necessary measures to adopt the Decree implementing section L.276 of the Labour Code in order to establish a list of jobs only authorizing the requisitioning of workers in the event of a strike to ensure the operation of essential services in the strict sense of the term.
- The need to include a provision ensuring that the restrictions set forth in section L.276 of the Labour Code concerning the occupation of workplaces or their immediate surroundings shall only apply when strikes cease to be peaceful or when respect for the 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 need to clearly specify 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 urges the Government to take the necessary measures in this respect within the context of its legislative reform.***

## Serbia

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

#### ***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)***

The Committee notes the comments received up to 31 July 2012 by the following workers' organizations on matters already raised: (1) the International Trade Union Confederation (ITUC) (31 July 2012 and 4 August 2011); (2) the Confederation of Autonomous Trade Unions of Serbia (CATUS) (15 and 27 September 2011); and (3) the Trade Union Confederation (TUC) "Nezavisnost" (15 September 2011). The Committee also notes the observations provided by the Government on 17 January and 20 November 2012 and 9 November and 28 October 2011, in reply to the comments provided by the CATUS dated 27 September 2011 and by the ITUC in its communications of 24 August 2010, 4 August 2011 and 31 July 2012. The Committee further notes the comments received after 31 August 2012 from the following workers' and employers' organizations: (1) the Confederation of Free Trade Unions (30 October 2012); (2) the TUC

“Nezavisnost” (5 September 2012); (3) the CATUS (5 September 2012); and (4) the Union of Employers of Serbia (5 September 2012). ***It requests the Government to provide its observations thereon.***

The Committee also notes the debate which took place within the Conference Committee on the Application of Standards in June 2011. It notes, in particular, that, in its conclusions, the Conference Committee urged the Government to ask for the technical assistance of the ILO with a view to bringing the legislation and practice into full conformity with the Convention. The Committee welcomes that, in its report, the Government requests ILO technical assistance. ***It hopes that the Office will be able to provide such technical assistance in the near future.***

***Civil liberties.*** 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 notes that the Government indicated to the Conference Committee that it was not aware of such attacks nor had they been reported to the labour inspectorate, and that once provided with the relevant information it would take the necessary steps to resolve the issue in accordance with the Convention. The Committee also notes that, in its conclusions, the Conference Committee requested the Government to undertake without delay independent investigations into the allegations and report accordingly. The Committee notes with ***concern*** the recent ITUC allegation of an attempted physical attack during a strike organized by the Independent Trade Union of Police. 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. ***The Committee requests the Government to take the necessary measures to institute an independent inquiry into all alleged acts of violence against trade union officials or members, and to ensure the respect of the abovementioned principles.***

***Article 2 of the Convention. Right of employers to establish and join organizations of their own choosing without previous authorization.*** 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 the amendment of the Labour Act to be completed by the end of 2010. The Committee notes that in 2011, the Government indicated to the Conference Committee on the Application of Standards that the draft amendment to the Labour Act was currently in preparation, but that the adoption of the revised Labour Act was now expected to take place after the parliamentary elections envisaged in 2012. The Committee also notes that, in its conclusions, the Conference Committee considered that the Government should accelerate the long-awaited amendment of section 216 of the Labour Act, especially the repeal of the 5 per cent threshold. The Committee notes that, in its report, the Government indicates that all legislative actions have been deferred until the completion of the process of forming a new Government and Parliament. It also notes the indication of the Union of Employers of Serbia that new provisions with regard to establishing employers’ organizations and obtaining and proving their representativeness had been a matter of short-term consultation until the 2011 International Labour Conference and then fell into oblivion. The Committee further notes that according to indications to the Conference Committee and written communications of several employers’ and workers’ organizations, concerns persist about the full participation of the social partners in the announced legislative review. ***The Committee trusts that, in the process of revising the relevant legislation, which should be conducted in full consultation with the most representative workers’ and employers’ organizations, due account will be taken of the need to amend section 216 of the Labour Act so as to retain a reasonable minimum membership requirement that does not hinder the establishment of employers’ organizations. The Committee hopes that the legislative review process will be completed in the near future and requests the Government to provide a copy of the amendments 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 Government in reply to the observations made by the Confederation of Autonomous Trade Unions of Serbia (CATUS), dated 26 August 2011, and by the International Trade Union Confederation (ITUC), dated 24 August 2010. The Committee also notes the comments made by ITUC dated 4 August 2011 and 31 July 2012 and observations submitted by the Trade Union Confederation Nezavisnost (TUC Nezavisnost) on the application of the Convention in practice, with particular regard to anti-union dismissals and limited social dialogue. It takes note of the Government’s reply of 20 November 2012 to the 2011 and 2012 ITUC comments, especially the information provided concerning inspection visits carried out by labour inspectors in the relevant companies and the measures of redress taken as a result. The Committee further notes the comments of the Union of Employers of Serbia dated 5 September 2012 and the comments of the Confederation of Free Trade Unions received on 30 October 2012. ***The Committee requests the Government to reply in its next report to all pending comments.***

***Article 1 of the Convention. Protection against anti-union discrimination in practice.*** On several occasions, the Committee had requested the Government to provide information on the application of the Convention in practice,

including statistical data on the number of complaints of anti-union discrimination brought before the competent authorities (labour inspectorate and judicial bodies), as well as on the outcome of investigations and judicial proceedings and their average duration. ***The Committee urges the Government to provide the abovementioned information.***

***Article 4. Promotion of collective bargaining.*** 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, may seek a new decision on the issue of representativeness. The Committee had requested the Government to take the necessary measures to amend section 233 of the Labour Law so that the three-year time span is reduced to a more reasonable period or explicitly allows the procedure for determination of the most representative status to take place in advance of the expiration of the applicable collective agreement. The Committee notes that, according to the Government's reply received on 29 October 2012, the legislation establishes that every trade union or employers' association whose representativeness had not been established may at any moment, when it has fulfilled requirements for representativeness, apply for establishment of representativeness. Furthermore, the Committee notes that the Government indicates that the legislation allows the review of collective agreements under certain circumstances, when the representativeness of a non-signatory trade union or employers' association of the agreement is established. ***The Committee recalls that this issue was raised by ITUC some years ago and invites it to send its comments with regard to the Government's statement.***

***Representativeness of workers' and employers' organizations.*** The Committee had previously noted 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. In this regard, the Committee also takes note of the comment of the Union of Employers of Serbia, which indicates that, despite the existing Panel for Establishment of Representativeness of Trade Unions and Employers Associations (tripartite body), the Minister for Labour and Social Policy established the so-called "Independent Committee" for assessing the requirements for representativeness, which is not independent at all and interferes in social dialogue and collective bargaining; and that on the basis of one recommendation of this "Independent Committee", the Ministry of Labour and Social Policy established, on 3 May 2012, the representativeness of the Confederation of Free Trade Unions, a matter which had been previously examined by the abovementioned panel which had requested additional supportive documents. In this regard, the Committee notes from the Government's reply to the ITUC communications that: (i) due to its method of decision-making (consensus), the panel was not operational and is currently not able to examine all pending applications nor to adopt new rules of procedure; (ii) the Ministry attempted to find a way out of this situation by establishing an independent committee; (iii) in view of the huge discontent of the panel members, the Ministry dismissed this method of determining representativeness; and (iv) the Ministry is aware that the current issue may be addressed by the adoption of the amendments to the Labour Law or of a separate law. ***The Committee notes this information and requests the Government to provide information in its next report on any developments relating to the process of revision of the Labour Law as well as a copy of the amended Labour Law once adopted.***

***Percentage required for collective bargaining.*** Moreover, the Committee had noted that section 222 of the Labour Law required 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, this issue would be reconsidered in the framework of the revision of the Labour Law, with the participation of the representative workers' and employers' organizations. The Committee recalls that, in its previous observation, it had requested the Government to lift the 10 per cent requirement for employers' organizations to be entitled to engage in collective bargaining, which is particularly high, especially in the context of negotiations in large enterprises, at the sectoral or national level. The Committee notes that, according to the Government, when employers' or workers' organizations do not fulfil the representativeness requirements, they can conclude an association agreement with another organization in order to fulfil the abovementioned requirement. The Committee notes that, according to the comments of the Confederation of Free Trade Unions received on 30 October 2012, an agreement on association to achieve representativeness may only be signed by two or more unrepresentative trade unions at company level in order to be able to be party in collective bargaining; nevertheless, this is not possible for trade unions and employers associations at higher levels. The Committee considers that the abovementioned percentages are very high and thus difficult to reach. The Committee had taken note of the fact that the amendments to the Labour Law that were under way also addressed the representativeness of trade unions and employers' organizations. ***The Committee requests the Government once again to take the necessary measures so as to lower the abovementioned percentages.***

The Committee notes the fact that, according to the Government's report dated 31 August 2012, elections were held in May 2012 and that all the legislative activities were deferred until the formation of the new Government and Parliament. ***The Committee expresses its 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 in its next report.***

## 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 in its report, the Government informs that the review of the IRA remains important and reiterates its desire to receive technical assistance from the Office in this regard. The Government informs in this regard that an ILO mission is planned to take place in 2013 together with national training on various dispute resolution systems for relevant stakeholders. The Government reiterates that once a tripartite committee responsible to make proposals towards the review of the IRA is set up, the Committee's observations will be brought to its attention for further action. The Government explains that the review has been delayed due to the difficulty faced by the Ministry of Labour and Human Resource Development in terms of limited human resources capacity of the division responsible to review the legislation. The Government indicates, however, that notwithstanding the above, as part of the Government's effort to comply with its international obligations, a national tripartite workshop on international labour standards and reporting was organized by the Government in collaboration with the ILO in August 2012. The aim of the workshop was to sensitize key ministries on the terms and provisions of the ratified ILO Conventions and to identify focal points in the relevant departments to ensure sustainability of reporting. *The Committee trusts that the review of the IRA will begin without further delay, in consultation with the social partners and with ILO technical assistance, and that the following sections of this legislation will be amended taking into account the Committee's previous comments:*

- *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 or she 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 requests the Government to indicate in its next report all progress made in this respect.*

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

*Articles 2, 3, 4 and 6 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 in its report, the Government informs that the review of the IRA remains important and reiterates its desire to receive technical assistance from the Office in this respect. The Government informs in this regard that an ILO mission is planned to take place in 2013 together with national training on various dispute resolution systems for relevant stakeholders. The Government reiterates that once a tripartite committee responsible to make proposals towards the review of the IRA is set up, the Committee's observations will be brought to its attention for further action. It explains that the review of the IRA in tandem with the review of the Employment Act has been delayed due to the difficulty faced by the Ministry of Labour and Human Resource Development in terms of limited human resources capacity. *The Committee trusts that the legislative review will begin without further delay, in consultations with the social partners and the ILO technical assistance, taking into account the Committee's previous comments in which it had requested the Government to take the necessary measures in order 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;*
- *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; and*
- *ensure that prison staff, excluded from the scope of the IRA, are granted the right to bargain collectively.*

*The Committee requests the Government to indicate any progress made in this respect.*

## Sierra Leone

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

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

## Slovenia

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1992)

*Articles 2 and 3 of the Convention. Protection against acts of interference.* In its previous comments, the Committee had 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 concrete sanctions for employers or their associations in case of interference in the activities of trade unions were currently not provided for by law and that legislative amendments had not yet been adopted in this regard. The Committee notes the Government's indication in its report, that no legislative amendments in this field are foreseen at present, that the relevant rights provided for in the Constitution are subject to judicial protection and that no practical problems have been detected in this area. The Committee considers that the Convention requires the existence of clear and precise legislative provisions ensuring adequate protection of workers' organizations from acts of interference as defined in *Article 2(2)* of the Convention. *The Committee therefore requests the Government to take the necessary measures to ensure that national legislation contains specific provisions prohibiting acts of interference by employers or their organizations in the establishment, functioning and administration of workers' organizations, and establishing effective and sufficiently dissuasive sanctions against such acts. It once again requests the Government to indicate any progress made 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 communications dated 4 August 2011 and 31 July 2012, alleging in particular, in different sectors, several instances of acts of violence, leading to injuries and death, arrests of striking workers as well as the dismissal of strikers (communication, pharmaceutical, retail chain, poultry, public and municipal sectors). The Committee recalls that it considers that in the event of assaults on the physical or moral integrity of individuals, an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. Furthermore, the Committee recalls that the arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers' organizations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association. The Committee also notes from the ITUC's communication the difficulties faced by casual workers to join a trade union. *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 serious comments, as well as the ITUC's 2008 and 2010 comments. Finally, the Committee notes from the ITUC's communication that a Labour Relations Amendment Bill has been finalized in 2012 and requests the Government to provide information on any developments in this regard.*

## Spain

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), the General Union of Workers (UGT) and the Trade Union Confederation of Workers' Committees (CC.OO.), referring to a 5 per cent wage cut in the public service pursuant to Royal Legislative Decree No. 8/2010 of 20 May on the adoption of special measures to reduce the public deficit, and to restrictions on collective bargaining under Act No. 3/2012 of 6 June on urgent measures for labour market reform.

The Committee observes that the Government's report has been received but points out that these matters have already been referred by the UGT and the CC.OO. to the Committee on Freedom of Association (Cases Nos 2918 and 2947), and are therefore under consideration by that committee.

## Sri Lanka

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)**

The Committee notes the comments made by the Employers' Federation of Ceylon (EFC) and the International Organisation of Employers (IOE) in a communication dated 18 August 2011.

The Committee also notes the Government's response to the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011. The Committee further notes the comments submitted by the Lanka Jathika Estate Workers' Union (LJEWU) dated 6 June 2012, and by the ITUC dated 31 July 2012, which relate to a number of matters already raised by the Committee, as well as violations of the Convention, in particular serious allegations relating to acts of intimidation against trade union activists and leaders, arrests and detention of workers following a strike, as well as police violence during workers' demonstrations, including in one case recourse to firing that led to the death of a worker and hundreds injured. **Recalling that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of workers' organizations, the Committee requests the Government to provide its observations on the abovementioned allegations, and to take the necessary measures to ensure that the use of excessive violence in trying to control demonstrations is prohibited, that arrests are made only where serious violence or other criminal acts have been committed, and that the police are called in a strike situation only where there is a genuine and imminent threat to public order.**

The Committee further notes that the Government indicates in its report that a special meeting of the National Labour Advisory Council took place on 1 February 2011 to discuss the implementation of the National Workers' Charter of 1995 (the national labour policy of Sri Lanka) and reflect on how laws and practice should be developed, in particular in relation to freedom of association issues. The Government adds in its report that this meeting aimed at reaching consensus among the social partners to effectively address the issues related to the implementation of the Convention, as well as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135). **Taking note of the summary of the proceedings of this meeting which the Government attaches to its report and of the indication that a tripartite subcommittee was formed for further discussions, the Committee expresses the hope that this process will bring positive results, including progress towards the amendment of the labour legislation, and that the comments made by the Committee for a number of years will be fully taken into account in this regard. It requests the Government to provide information on the progress made in its next report.**

*Article 2 of the Convention. Minimum age.* In its previous observation, noting that the minimum age for admission to employment was 14 years and that the minimum age for trade union membership was 16 years (section 31 of the Trade Unions Ordinance), the Committee recalled that the minimum age for trade union membership should be the same as the minimum age for admission to employment. The Committee notes that the Government reiterates that it is seeking to increase the minimum age for employment to 16 years. **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 section 21 of the Trade Unions Ordinance in order to ensure that organizations of government staff officers may join confederations of their own choosing, including those which also group together organizations of workers from 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 notes that the Government indicates in its report that action will be initiated to negotiate with the ministry concerned to reach a consensus on this issue. **The Committee reiterates its hope that amendments to section 21 of the Trade Unions Ordinance will be adopted in the near future, in order to ensure that trade unions in the public sector may join confederations of their own choosing, and that first-level organizations of public employees may cover more than one ministry or department in the public service, and requests the Government 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 (section 49 of the Industrial Disputes Act), that a mechanism for dispute prevention and settlement in the public sector was being developed with technical assistance from the ILO, and that a document concerning the dispute settlement mechanism had been adopted. ***Noting the absence of any new information in this regard in the Government's latest report, the Committee expresses the hope that progress will be made in the near future towards the establishment of a mechanism for dispute prevention and settlement in the public sector, which would fully respect the principles recalled in the Committee's previous observations. It requests the Government to provide information in this regard in its next report.***

*Compulsory arbitration.* In its previous observation, the Committee 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. ***The Committee is bound to reiterate its request to the Government to amend sections 4(1) and 4(2) of the Industrial Disputes Act, so as to ensure that recourse to compulsory arbitration to bring an end to a collective labour dispute and a strike is only possible: (i) when the two parties to the dispute so agree; or (ii) when the strike in question may be restricted, or even prohibited, that is: (a) in the case of disputes concerning public servants exercising authority in the name of the State; (b) in conflicts in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, but only for a limited period of time and to the extent necessary to meet the requirements of the situation. 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 (in accordance with sections 16 and 17 of the Trade Unions Ordinance), the administrative decision will not take effect until the final decision is handed down. The Committee notes that the Government reiterates its previous comments 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 is therefore bound to reiterate its request to 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.***

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: 1972)***

The Committee notes the Government's response to the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011. The Committee further notes the comments submitted by the Lanka Jathika Estate Workers' Union (LJEWU) dated 6 June 2012, and by the ITUC dated 31 July 2012, which relate to matters already raised by the Committee, as well as allegations of infringements of the Convention, in particular numerous allegations of acts of anti-union discrimination. ***The Committee requests the Government to provide its observations on these comments.***

The Committee also notes the comments made by the Employers' Federation of Ceylon (EFC) and the International Organisation of Employers (IOE) in a communication dated 18 August 2011, stating in particular that the Industrial Dispute Act provides for mandatory collective bargaining, which they consider is contrary to the essence of the Convention, and that this piece of legislation is discriminatory in that it only sets out unfair labour practices on the part of the employers and not on the part of the workers or their organizations. ***The Committee requests the Government to provide its observations on these comments.***

The Committee notes that the Government indicates in its report that a special meeting of the National Labour Advisory Council took place on 1 February 2011 to discuss the implementation of the National Workers' Charter of 1995 (the national labour policy of Sri Lanka) and reflect on how laws and practice should be developed, in particular in relation to freedom of association and collective bargaining issues. The Government adds in its report that this meeting aimed at reaching consensus among the social partners to effectively address the issues related to the implementation of the Convention, as well as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Workers' Representatives Convention, 1971 (No. 135). ***Taking note of the summary of the proceedings of this meeting which the Government attaches to its report and of the indication that a tripartite subcommittee was formed for further discussions, the Committee expresses the hope that this tripartite process will bring positive results, including progress towards the amendment of the labour legislation, and that the comments made by the Committee for***



*a number of years will be fully taken into account in this regard. It requests the Government to provide information on the progress made.*

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* In its previous comments, the Committee had requested the Government to take the necessary measures to ensure that legislation prohibiting acts of anti-union discrimination is coupled with effective and expeditious procedures and sufficiently dissuasive sanctions to ensure their application.

- *Sufficiently dissuasive sanctions.* The Committee notes with *interest* that the Government indicates in its report that Industrial Disputes (Amendment) Act No. 39 of 2011 has increased the amount of the fine provided for in cases of anti-union discrimination from 20,000 (approximately US\$367) to 100,000 rupees (approximately US\$1,835).
- *Effective and expeditious procedures.* Noting that in practice only the Department of Labour can bring cases concerning anti-union discrimination before the Magistrate's Court and that there are no mandatory time limits within which complaints should be made to the Court, the Committee had previously requested the Government to indicate whether trade unions had the capacity to bring their grievances directly before the courts, and to take measures in consultation with the social partners to guarantee that short time periods for the examination of the anti-union discrimination cases by the authorities would be established. The Committee notes that the Government indicates in its report that: (i) the opportunity of granting trade unions the right to bring anti-union discrimination claims directly before the courts has been discussed on a tripartite basis on a number of occasions and that no consensus was reached on this matter; (ii) a circular dated 29 April 2011 was addressed by the Commissioner General of Labour to all officers of the Department of Labour, providing guidelines on the procedure to be respected when receiving a complaint of unfair labour practice, including deadlines, and, in particular, that complaints should be enquired within 14 days upon receipt; and (iii) delays in dealing with the complaints were due to time consumed in the collection of the necessary evidence for a case to be filed with the court. ***Stressing once again that the existence of 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, and observing that, according to the ITUC's comments, numerous acts of anti-union discrimination occur in practice, the Committee requests the Government to take the necessary measures to ensure the effectiveness and expeditiousness of the procedures detailed in the new guidelines, and to provide information on the number of cases of anti-union discrimination examined by the courts and the results thereof. The Committee further requests the Government to take the necessary measures to ensure that workers who are victim of anti-union discrimination can lodge a complaint before the judicial courts. The Committee also invites the Government to continue to discuss, on a tripartite basis, the possibility of granting trade unions the right to bring anti-union discrimination cases directly before the courts.***

*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 notes with *regret* that the Government does not provide information on this matter in its report. ***The Committee is therefore bound to reiterate its request that the Government provide information on progress achieved to promote collective bargaining, including on the result of the measures taken by the SDWC and those taken in furtherance of the National Policy for Decent Work.***

*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 as a substitute for trade unions in EPZs. The Committee notes that the Government indicates in its report that Trade Unions' Facilitation Centres have been established in three EPZs, with a view to facilitating private meetings between workers and their representatives. The Government further indicates that the Board of Investment is vigilant that the formation or functioning of employees' councils does not undermine the formation or functioning of trade unions. The Government adds that complaints in this regard can be submitted to the Commissioner General of Labour, to the National Labour Advisory Council and to the Board of Investment. ***Given the apparent difficulties with regard to the exercise of workers' rights to organize and collective bargaining in EPZs, the Committee requests the Government to provide information in its next report on specific measures taken to address these difficulties. The Committee also requests the Government to ensure that employees' councils do not undermine the position of trade unions, in particular in relation to their right to collective bargaining, and to indicate any developments in this regard in its next report.***

*Representativeness requirements for collective bargaining.* In its previous observation, the Committee had noted that, under section 32A(g) of the Industrial Disputes 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. The Committee notes that, in their comments, the IOE and the EFC express the view that it is important that the bargaining agent on behalf of the workers has sufficient representative strength to bargain with the employer and indicate that all major trade unions of the country have no problem in keeping the 40 per cent threshold. The Committee notes, however, that the LJEWU states that due to the multiplicity of trade unions in the country it is extremely rare that the 40 per cent threshold is met. The Committee also notes that the Government indicates that there is no restriction for small trade unions to negotiate or intervene in matters relating to their members, and that there is no consensus amongst the trade unions on this issue. ***The Committee therefore requests the Government to continue to discuss, on a tripartite basis, the need to ensure in the legislation 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 progress made in this regard in its next report.***

*Article 6. The right to collective bargaining in the public service.* In its previous observation, the Committee noted that, as of 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 also noted 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 with *regret* that the Government does not provide information on this matter in its report. ***The Committee is therefore bound to reiterate its request that the Government take the necessary measures to recognize and promote civil servants' right to collective bargaining, as long as they are not engaged in the administration of the State, and to indicate any developments in this regard in its next report.***

Finally, as regards the establishment of a mechanism for dispute prevention and settlement in the public sector, the Committee refers to its comments made in its observation under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

## Sudan

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

The Committee notes that the Government's report does not reply to the issues at stake but requests ILO technical assistance. It must therefore repeat its previous observation which read as follows:

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC), 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.**

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

The Committee notes that, in its communication dated 31 July 2012, the ITUC states that the new Law on trade unions maintains the former system of monopoly at federation level and that wages are determined by a tripartite committee. The ITUC also refers to infringements of human rights that are crucial to the exercise of freedom of association rights. **The Committee requests the Government to provide its observations in relation to these allegations.**

## Swaziland

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

*Comments from employers' and workers' organizations.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee notes the communication dated 31 July 2012 from the International Trade Union Confederation (ITUC) concerning the issues under examination, as well as allegations of continued repression of trade union activities in practice throughout the period under review, and reports on police brutality and harassment against trade unionists, including trade union leaders of the Swaziland Federation of Trade Unions (SFTU), the Swaziland Federation of Labour (SFL) and the Swaziland National Association of Teachers (SNAT), and the arrest and expulsion of officials from the Congress of South African Trade Unions (COSATU). The Committee also notes the comments dated 29 August and 25 September 2012 from the Trade Union Congress of Swaziland (TUCOSWA) on the implementation of the Convention in practice, on the exercise of trade union activities in the country under a repressive and tense atmosphere and without any meaningful social dialogue, and on the non-recognition and purported deregistration of the TUCOSWA by the Government. In view of the continued and long-standing comments from national and international trade unions on the exercise of trade union rights in the country, the Committee cannot but firmly recall that 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. **The Committee urges the Government to ensure that this principle is respected and requests it to provide its reply to the serious allegations of the ITUC and the TUCOSWA. Furthermore, recalling that Article 5 of the Convention recognizes the right of workers' organizations to establish or to join federations and confederations of their own choosing, the Committee requests the Government to take all necessary steps to proceed to the registration of TUCOSWA, including legislative measures if necessary.**

*Legislative issues.* In its previous comments, the Committee noted that the Public Service Bill was being debated in both Houses of Parliament, after the social partners were given the opportunity to lobby the Senate on July 2011, and the assistance of an ILO expert which gave a presentation at the request of the Senators on August 2011. The Committee notes from the Government's report that the Bill could not be passed into law in the time required and that the process has since been reinitiated. The Government specifies that the Public Service Bill has been republished in a *Government Gazette* as Bill No. 4 of 2012 and is now open to the public for consultations and inputs, which gives an opportunity for further consultations with stakeholders. The Bill was further circulated to the Labour Advisory Board and will form part

of its agenda. ***The Committee requests the Government to provide information on the progress made to adopt the Public Service Bill and expresses the firm hope that it will be in full conformity with the provisions of the Convention with regard to trade union rights of public service workers. The Committee requests the Government to transmit a copy of the Bill once it is promulgated into law.***

In its previous comments, the Committee noted the entry into force of the Industrial Relations (Amendment) Act of 2010 (Act No. 6 of 2010) which amended a number of provisions of the Industrial Relations Act (IRA), upon which the Committee had been commenting for many years. However, the Committee recalled that it has been requesting the Government to amend its legislation on other pending legal issues.

***Determination of a minimum service in sanitary services.*** The Committee recalls that it has been requesting the Government for many years to amend the IRA to recognize the right to strike in sanitary services, and establish only a minimum service with the participation of workers and employers in the definition of such a service. In its previous comments, the Committee observed that Act No. 6 of 2010 provides for a clear definition of “sanitary services” in its section 2 and that the Essential Services Committee had engaged in discussion with the trade union and the staff association on the determination of the minimum service that should be provided. The Committee notes from the Government’s report that section 2 of the IRA has been amended to allow for the establishment of a minimum service in sanitary services and that the Essential Services Committee held a number of meetings with the sanitary services trade unions. The Government indicates that the trade unions needed time to consult with other branches in other towns and city councils and are expected to present a proposed minimum service to the Essential Services Committee. ***The Committee requests the Government to provide information on the final outcome of discussions engaged with the social partners with respect to the determination of the minimum service to be afforded for sanitary services.***

***Civil and criminal liabilities of trade union leaders.*** The Committee recalls that in its previous comments it requested information on the effect given in practice to section 40 of the IRA with regard to the civil liability of trade union leaders and, in particular, the charges that may be brought under section 40(13) (civil liability of trade union leaders), as well as the effect given to section 97(1) (criminal liability of trade union leaders) of the IRA by ensuring that penalties applying to strikers do not in practice impair the right to strike. The Committee notes from the Government’s report that a proposal to amend both sections 40 and 97 of the IRA was tabled to the Labour Advisory Board on 8 May 2012 and that social partners are consulting on the issues and are expected to come back shortly to the board with their proposals. ***The Committee requests the Government to provide information on all progress made to amend sections 40 and 97 of the IRA.***

***Right to organize for prison staff.*** The Committee recalls its previous comments on 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 notes from the Government’s report that the Ministry of Justice and Constitutional Affairs tabled the draft Correctional Services (Prison) Bill to the Social Dialogue Committee on 13 July 2011 but that the said committee could not deliberate on the proposed Bill which was then submitted to Cabinet. However, Cabinet directed that the social partners should be given an opportunity to make their input to the draft text which was circulated to the Labour Advisory Board on September 2012. ***The Committee requests the Government to provide information on all progress made to adopt the Correctional Services (Prison) Bill in order to guarantee the right to organize for prison staff.***

***Other pending issues concerning legal acts and proclamation.*** The Committee recalls that its comments also concerned a number of legal acts and proclamation which gave rise to practices contrary to the provisions of the Convention. The Committee takes note of the technical assistance provided by the Office in order to review the provisions of these texts, namely the 1973 Proclamation and its implementation regulations, the Public Order Act of 1963 and the 2005 Constitution of the Kingdom of Swaziland, and to make recommendations for corrective measures where needed. The ILO consultancy took place in 2011 and the report on proposed legislative amendments was circulated to the social dialogue committee on January 2012. It was reported that the said committee reviewed the report several times between February and March 2012. The Committee notes however that, according to the Government, further discussions on the issue were cancelled at the request of the trade unions due to other domestic issues they wanted to deal with. ***The Committee takes due note of the Government commitment to endeavour to resume the discussions with the social partners in the framework of the social dialogue committee on the recommendations made pursuant to the ILO consultancy and firmly hopes that the Government will be able to report in the near future on progress made on the pending issues:***

- ***The 1973 Proclamation and its implementing regulations.*** In relation to the status of this Proclamation, the Committee previously observed from the 2010 high-level tripartite 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. The Committee also took note of the “Attorney-General’s Opinion” which stated that “on the coming into force of the Constitution, the Proclamation died a natural death”. The Committee notes that the Government maintains in its report that there is no state of emergency in Swaziland. The Government adds that the Decree No. 2 of the King’s Proclamation was introduced for a period of six months and was extended by the Continuation of Period Order of 1973. However, the Detention Order of 1978 – which introduced the 60 days detention without trial or appearing before Court – repealed the Continuation of Period Order

of 1973. Furthermore, the Detention (Repeal) Decree of 1993 repealed the Detention Order of 1978. Finally, the Government asserts that the Constitution of 2005, once promulgated, became the supreme law and any other law inconsistent with it is null and void to the extent of its inconsistency. ***The Committee requests the Government to indicate the outcome of discussions with the social partners and any measures taken thereof in relation to the status of the 1973 Proclamation.***

- ***The 1963 Public Order Act.*** The Committee has been requesting the Government for a number of years 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 previously noted from the conclusions of the 2010 high-level tripartite 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. The Committee observes that in its report, the Government indicates that the ILO report following the consultancy recommended that the Act be amended and that the Government will submit the proposal to the social dialogue committee. ***The Committee requests the Government to provide information on the outcome of the discussions in the social dialogue committee on the amendment of the 1963 Public Order Act and on any measures taken thereof in order to ensure that the Act is not used in practice to interfere in trade union meetings or protest actions.***

The Committee notes that the ILO technical assistance has also resulted in the drafting by the Government of a code of good practice for protest and industrial action, which is being submitted to the Office for comments. ***The Committee requests the Government to provide information on any progress made to adopt the code of good practice for protest and industrial action and to provide a copy.***

***Finally, while acknowledging the Government's commitment to pursue its efforts in order to address all remaining issues on the application of the Convention in line with its long-standing requests, the Committee cannot but firmly hope that the Government will provide in its next report information on concrete progress made. The Committee also reminds the Government of its duty, under the Convention, to take all appropriate measures to guarantee that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind.***

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)***

***Comments received from the International Trade Union Confederation.*** The Committee notes the communication dated 31 July 2012 from the International Trade Union Confederation (ITUC) which denounces continued repression of trade union activities and reports police brutality and harassment against trade unionists and trade union leaders of the Swaziland Federation of Trade Unions (SFTU), the Swaziland Federation of Labour (SFL) and the Swaziland National Association of Teachers (SNAT), and the arrest and expulsion of officials from the Congress of South African Trade Unions (COSATU). ***In view of the seriousness of these allegations, the Committee cannot but firmly recall that rights of employers' and workers' organizations can only be guaranteed where fundamental human rights are respected and exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations. The Committee urges the Government to ensure that this principle is respected and requests it to provide its reply to the comments of the ITUC.***

The Committee had previously noted allegations from the ITUC on a number of acts of anti-union discrimination in the textile sector and in export processing zones (EPZs), and requested information on collective bargaining practices in the EPZs. The Committee notes the indication that, out of 23 textile factories inspected in 2011 in the EPZs, only six had a recognition agreement with the trade unions, which shows limited collective bargaining in the sector. However, the Government also presents the possibility for a trade union seeking recognition to refer a dispute to the Conciliation Mediation and Arbitration Commission (CMAC) under section 42 of the Industrial Relations Act as amended in 2005. The Committee further notes that in its communication the ITUC alleges that collective bargaining in the public sector is restricted in its coverage since the Ministry of Public Administration, Employment and Social Security sets wages and benefits on an annual basis in consultation – but without negotiation – with the trade unions. ***The Committee requests the Government to provide information on the status of collective bargaining in all sectors, including in the EPZs, following the entry into force of Industrial Relations (Amendment) Act No. 6 of 2010 which modified section 42 by requiring employers with more than two unrecognized unions to give collective bargaining rights to such unions to negotiate on behalf of their members (the Committee had noted this progress in its previous comments). It also requests the Government to clarify whether negotiation with trade unions is possible when setting wages and benefits in the public sector.***

***Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference.*** The Committee recalls that its previous comments referred to 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. The Committee notes the Government's statement according to which this matter is part of the agenda

of the Labour Advisory Board meeting scheduled in October 2012 and any progress made in this regard will be reported back to the Committee. *The Committee requests the Government to indicate any progress made to ensure that workers and their organizations are effectively protected against acts of interference and anti-union discrimination (in view of the allegations of the ITUC), in accordance with the Convention.*

## Sweden

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)**

The Committee notes the information provided by the Government on the impact of legislative changes and the comments of the Confederation of Swedish Enterprise (CSE) attached to the Government's report. It further takes note of the supplementary comments dated 10 August 2011 and 13 November 2012 made by the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Employees (TCO). *The Committee invites the Government to provide any further information it considers relevant in reply to these comments.*

The Committee recalls that in its previous observation it had taken note of the comments provided by the LO and the TCO concerning 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 referred in particular to the ex post facto application of the interpretation given to European Union law in the *Laval* judgment to the industrial action taken in 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 Codetermination Act of 1976. The LO and the TCO denounce the new legislation which it states only permits industrial action against a foreign employer where it is aimed at bringing about a collective agreement restricted to the minimum terms covered by article 3(1)(a)–(g) of the Posting of Workers Directive (PWD). They emphasize that industrial action against a foreign employer is thus forbidden as regards any demand for a term or condition of employment higher than the absolute minimum set out in a central collective agreement and in relation to a range of other issues not set out in the PWD, such as insurance coverage for foreign workers. Moreover, section 5(a)(2) provides that industrial action may not be taken if the employer shows that the employees' terms and conditions in substance are as favourable as the minimum conditions in the central collective agreement. The LO and the TCO contest that there are no specific details on how the employer may show this. The Committee had requested the Government to monitor the impact of the legislative changes on the rights under the Convention and provide a detailed report.

#### **General appreciation**

The Government in its latest report, observing that the LO and TCO have submitted a similar complaint to the European Committee of Social Rights (ECSR), provides the following information. The Government specifies that a parliamentary committee was assigned on 27 September 2012, composed of representatives of all parliamentary parties, to look at the situation of posted workers and, following its investigation: (1) evaluate whether the application of the regulation ensures that fundamental employment conditions of posted workers in Sweden can be safeguarded; (2) in terms of foreseeability, assess and evaluate the practice of the Swedish Work Environment Authority's statutory task of providing information and the trade unions' obligation to submit information on collective bargaining agreements to the Swedish Work Environment Authority, and if necessary propose legislative changes in this regard; and (3) consider necessary changes to safeguard the Swedish labour market model in an international context. The Committee shall pursue a dialogue with representatives of the social partners on the Swedish labour market and include an analysis of the consequences, if any, in relation to relevant international regulations and present its work on 31 December 2014.

The Government also refers to a Bill regarding agency workers which was submitted to the Swedish Parliament on 18 September 2012 and includes a proposal that would increase the trade unions' possibilities to take industrial action in order to regulate the terms and conditions of employment of posted agency workers. The legislative changes are proposed to enter into force on 1 January 2013. Finally, the Government refers to the directive to improve the application of the EU Posting of Workers Directive which is being negotiated at EU level.

The Committee notes the concerns raised by the LO and the TCO that the new situation makes it difficult to determine in advance what is lawful, and the risk of large claims for damages have made trade unions in Sweden more cautious about demanding collective agreements. No trade union industrial action with a view to bringing about a collective agreement with a foreign company has taken place at all in recent years in the Swedish labour market, leading to a sharp fall in collective agreements. This means that foreign workers are entirely without protection as regards reasonable terms and conditions of pay and employment when they are working in the Swedish labour market and that Swedish workers are exposed to competition from workers with very low pay and wretched employment conditions. A further implication is that Swedish companies can no longer compete on equal terms with foreign companies. In the long term, there is a risk that this will have negative repercussions for the entire Swedish labour market model.

The Committee notes the comments of the Confederation of Swedish Enterprise that: the free movement of services throughout the EU is one of the foundations of the EU which requires that the barriers to providing services between Member States be abolished; the free movement of services is of vital importance in creating growth within Europe, and

the positive effects of this in areas such as exports and consumption leading to increased employment and welfare in European countries; the EU's rules also give people the opportunity of employment and work in other countries; the aim of the Posting of Workers' Directive is to enable this free movement without barriers, while ensuring that employees who work temporarily in other European Economic Area (EEA) countries are provided with an adequate level of protection. As Sweden is a small country which is dependent on trade for its prosperity, these rules are of crucial significance. The service sector is expanding in both Sweden and in Europe and the provision of services across borders will become increasingly important.

The CSE and the Swedish Association of Local Authorities and Regions do not consider that the changes made in the Posting of Workers Act and the Codetermination Act in response to the *Laval* judgment violate ILO Conventions. The Confederation adds that they were necessary to fulfil requirements of EU law in respect of the free movement of services and non-discrimination. With respect to the right to strike, the Confederation stresses that Convention No. 87 does not include any right to strike, which remains therefore a matter for national regulation. The Confederation adds that, in Sweden, it is normal that a trade union which takes illegal industrial action may have to pay compensation for losses arising from that action, as is the case in most legal systems.

The Confederation states that the changes to the legislation only affect the ability of trade unions to take industrial action against foreign companies and do not in any way affect the right to organize and the ability to enter into voluntary collective agreement negotiations. Swedish trade unions are free to request the conditions which they consider appropriate and are not limited to core rights in this regard. Nor are there any barriers preventing employees posted to Sweden from joining a Swedish trade union, nor preventing foreign employers from joining a Swedish employers' association. The Confederation considers that the rules introduced represent a significant improvement in so far as it is now easier for companies from the EEA to operate temporarily in Sweden. The new system is more predictable and legally secure, enabling companies to identify in advance the conditions which they are obliged to apply while working in Sweden, and the conditions which trade unions are entitled to demand through collective bargaining. The Confederation states that Swedish trade unions continue to request foreign companies to sign collective agreements and that the foreign companies usually sign them. It is not aware of any disputes having arisen in this regard, or of steps taken by a foreign employer to protect against industrial action. The Confederation further recalls that the Posting of Workers Act states that high standards of reliability must be placed on statements advanced by the employer to be protected from industrial action so it is likely that the employer would have to demonstrate the salaries and conditions actually provided beyond just citing the employment contract. The Confederation does not consider that the current system would prevent Swedish companies from being able to compete with foreign companies which comply with current Swedish regulations.

The Confederation does however regard with great concern the proposed legislation which the Swedish Government has recently introduced (Bill 2011/12:178, Law on Hiring of Workers) in which the Government proposes that foreign temporary work agencies are to be treated differently than other foreign companies by permitting industrial action against the former with the object of demanding conditions within the areas included in the core rights but not restricted to the minimum levels in collective agreements. The Confederation believes this would likely lead to an increase in collective disputes with foreign companies and will create uncertainty in the differences between those covered by this Bill and other foreign businesses making it unreasonably difficult to predict the precise conditions that they would need to apply when active in Sweden.

In its additional communication dated 13 November 2012, the LO and the TCO welcome the Government's submission which they hope will enable the Committee to carry out its work. They regret however that the Parliamentary Committee set up to evaluate the changes in the Foreign Posting of Employees Act was not given the mandate to review the Act in light of Conventions Nos 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). While the LO and TCO consider that the new legislation on posted agency workers is a step forward, they consider that this does not resolve the issue of the collective agreement free zones on issues outside the Posting of Workers Directive. Finally, they indicate that the discussions within the EU on a directive to improve the application of the Posting of Workers Directive are irrelevant as the proposal being discussed does not address the issue of the right to take collective action.

***The Committee requests the Government to continue to provide information on the impact of the legislation and in particular the outcome of the work of the Parliamentary Committee and any proposed legislative changes, as well as the developments relating to the Bill regarding agency workers.***

### **Sanctions for industrial action**

In their previous communication, the LO and the TCO refer to the €342,000 in punitive damages, litigation costs and interest that the Swedish Building Workers' Union (Byggnads) and the Swedish Electricians' Union were forced to pay to Laval's Latvian trustee in bankruptcy. In this regard, the LO and the TCO state that the unions were being held liable for an ex-post facto application of the interpretation given to European Law through the *Laval* judgment. Despite the fact that the initial consideration by the Swedish courts in December 2004 found that the collective action was lawful under Swedish Law (a decision which cannot be appealed), the Swedish labour court revisited the case in 2009 in the light of the 2007 ECJ judgment and, given that the trade unions now conceded that the action was unlawful, ordered payment of damages. While having made the full payment of damages in October 2010, the unions continue to claim that they should

not be held liable for industrial action which was considered to be lawful at the time it was undertaken; any expectation that the unions should have known that the action would be found unlawful under European Law several years later is wholly unreasonable.

The Committee, observing that the Government has still not provided any reply to this point, first wishes to recall its considerations when examining the impact of the *International Transport Workers' Federation and the Finnish Seaman's Union v. Viking Line ABP (Viking)* and *Laval* judgments in another European country. As in that case, the Committee wishes to recall that its task is not to judge the correctness of the ECJ's holdings in *Viking* and *Laval* as they set out an interpretation of the European Union Law, based on varying and distinct rights in the Treaty of the European Community, but rather to examine whether the impact of these decisions at national level is such as to deny workers' freedom of association rights under Convention No. 87. The Committee raised the concern at the time that the omnipresent threat of an action for damages that could bankrupt the union, possible in the light of the *Viking* and *Laval* judgments, created a situation jeopardizing the exercise of the rights under the Convention. In this specific case, the Committee is **deeply concerned** that the union in question has been held liable for an action that was lawful under national law and for which it could not have been reasonably presumed that the action would be found to be in violation of European Law. The Committee recalls that imposing sanctions on unions for leading a legitimate strike is a grave violation of the principles of freedom of association. The Committee considers that this principle is all the more relevant in the circumstances where the action was lawful at the time it was exercised. **While aware that the payment has already been made to the trustee in bankruptcy, the Committee requests the Government to review this matter with the social partners concerned so as to study possible solutions for compensation of the two unions, particularly in light of the 2004 court judgment leading the unions to believe their action was lawful.**

### *Lex Laval*

The Committee notes the Government's reiteration that the legislative changes made following the *Laval* ruling, which entered into force on 15 April 2010, do not violate any of the ILO Conventions on freedom of association or collective bargaining. The Government has explained that the core of the relevant change is a new section 5(a) which only refers to the Swedish trade unions rights to take industrial action against a foreign employer who posts workers to Sweden and does not affect either the workers' rights to form or join trade unions or to engage in collective bargaining. Moreover, the restriction only refers to industrial action aimed at conditions going beyond the hard core of the PWD. The Government adds that the amendments do not affect industrial action in a purely national situation and contends that the Convention primarily protects national conditions and not workers who have been posted to another country. Moreover, the Government stated that the Convention primarily protects industrial action against the employee's own employer which is not the case if the posted workers are not members of the Swedish trade union.

The Committee notes the comments of the LO and the TCO that the explicit purpose of the Swedish legislation prior to the *Laval* case, and in particular the *Lex Britannia* rule which permitted industrial action with the purpose of compelling a foreign employer to enter into a collective agreement regardless of whether the employer was already bound by a collective agreement with a trade union in its home country, was to achieve equality of treatment on the Swedish labour market of foreign and Swedish companies and employees. The Committee notes that the LO and the TCO denounce the new legislation which it states only permits industrial action against a foreign employer where it is aimed at bringing about a collective agreement restricted to the minimum terms covered by article 3(1)(a)–(g) of the PWD. They emphasize that industrial action against a foreign employer is thus forbidden as regards any demand for a term or condition of employment higher than the absolute minimum set out in a central collective agreement and in relation to a range of other issues not set out in the PWD, such as insurance coverage for foreign workers. Moreover, section 5(a)(2) provides that industrial action may not be taken if the employer merely shows that the employees' terms and conditions in substance are as favourable as the minimum conditions in the central collective agreement. In other words, the employer does not even need to be bound by a collective agreement with a trade union in its own country or prove in a legally binding way the assurance of minimum conditions in order to be protected from industrial action. Finally, the LO and TCO indicate that, while the Swedish trade union movement has been making great efforts to organize foreign workers posted to Sweden, the restriction on industrial action makes no distinction as to whether or not the union has members in the foreign enterprise.

In its latest report, the Government, while observing that there has not yet been any unbiased and comprehensive evaluation of the legislative changes, provides statistics from the Swedish National Mediation Office showing that these statistics show that the number of disputes with foreign employers is low; there was one dispute in 2007 and 2008 and no disputes from 2009 through 2011. There was a slightly higher number of disputes prior to 2007 ranging from five in 2002 and 2003 to 12 in 2004, 11 in 2005 and four in 2006.

As a general matter, the Committee recalls that when elaborating its position in relation to the permissible restrictions that may be placed upon the right to strike, it has never included the need to assess the proportionality of interests bearing in mind a notion of freedom of establishment or freedom to provide services. The Committee has however suggested that, in certain cases, the notion of a negotiated minimum service in order to avoid damages which are irreversible or out of all proportion to third parties, may be considered and if agreement is not possible the issue should be referred to an independent body (see 2012 General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, paragraphs 136–139). The Committee considers,



however, that the principles of the Convention does not impose the recognition of a *Lex Britannia* rule, which is very particular to Sweden. This would be a matter to be determined at the national level.

The Committee does observe with *concern*, however, that the amendments to the Foreign Posting of Employees Act restrict recourse to industrial action to conditions corresponding to the PWD minimum conditions and further bar unions from taking industrial action even if they have members working in the enterprise concerned and regardless of whether a collective agreement covers the workers concerned, provided that the employer can show that the employees' terms and conditions are as favourable as the minimum conditions in the central collective agreement. The Committee considers that foreign workers should have the right to be represented by the organization of their own choosing with a view to defending their occupational interests and that the organization of their choice should be able to defend its members' interests, including by means of industrial action. ***The Committee therefore requests the Government to review with the social partners the 2010 amendments made to the Foreign Posting of Employees Act so as to ensure that workers' organizations representing foreign posted workers are not restricted in their rights simply because of the nationality of the enterprise.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1950)**

The Committee notes the information provided by the Government on the impact of legislative changes and the comments of the Confederation of Swedish Enterprise attached to the Government's report. It further takes note of the supplementary comments dated 10 August 2011 and 13 November 2012 made by the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Employees (TCO). ***The Committee invites the Government to provide any further information it considers relevant in reply to these comments.***

The Committee refers to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as regards the general appreciation of the impact of the legislation introduced in Sweden in 2010 in response to the European Court of Justice (ECJ) judgment in the case *Laval un Partneri v. Svenska Byggnadsarbetareförbundet (Laval)*.

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee notes the Government's statement, in reply to the LO and TCO comments, that the new legislation places no restriction on collective bargaining but only the conditions under which industrial action can be undertaken (see under Convention No. 87). The Committee takes due note, however, of the further assertions made by the LO and the TCO that the conditions for trade unions to negotiate with foreign employers have deteriorated given that the obligation to register a representative for the business domiciled in Sweden has been removed with reference to EU law and the Services Directive. According to the LO and the TCO, the absence of any legal obligation to have a representative in the country poses a significant obstacle to the exercise of collective bargaining with foreign employers. The LO and the TCO add that this is of particular concern within the Swedish context where legislation on pay rates is nearly non-existent and wages and employment conditions are regulated to a great extent through collective agreements (collective agreements cover 90 per cent of the workforce). Moreover, the LO and the TCO indicate that the impact of the various restrictions ever since the *Laval* judgment can be seen in the statistics issued by the National Mediation Office. In 2007, 107 collective agreements were signed with foreign companies, in 2008 only 40, in 2009, 29 agreements were signed and in 2010 there were only 27. They state that there is no corresponding decrease in collective agreements for Swedish companies.

In reply to the LO and TCO comments, the Government refers to plans to submit a Bill, at the latest on 30 November 2012, whereby foreign employers must report that they post workers to Sweden and appoint a contact person in Sweden, who shall be authorized to receive notice on behalf of the employer. The contact person shall further be able to provide documentation demonstrating that the requirements of the Foreign Posting of Employees Act, as regards employment conditions for posted workers, are met. Trade union knowledge of posted workers in the country may facilitate negotiations for collective agreements. As to the impact on concluded collective agreements, the Government adds that there were 62 registered collective agreements concluded directly with foreign employers at the end of 2011. The statistics of the Mediation Office indicate that the Swedish Building Workers' Union (Byggnads) concluded 33 collective agreements directly with foreign employers in 2011 (27 in 2010, 29 in 2009, 40 in 2008). An additional five foreign employers became bound by agreements with the construction workers' union through membership in an employer's organization in 2011 (15 in 2010). Byggnads concluded 107 collective agreements in 2007 when approximately 15 foreign employers became bound through membership in an employer's organization. The Government adds that there is no analysis for the reasons behind these figures or information on the number of foreign employers and posted workers in Sweden. The Government observes, however, that the investigation of the parliamentary committee and the legislative proposal on reporting obligations will enable such analysis.

The Confederation of Swedish Enterprise (CSE) does not consider that the fact that a foreign employer established in an EU or EEA country is not, in certain circumstances, required to have a representative resident in Sweden represents a barrier to the right of collective bargaining. A foreign employer who posts employees in Sweden is subject to the rules on negotiating obligations in the Codetermination Act which apply to Swedish employers. The Confederation does support however the part of the Government's proposal that introduces provisions in the Posting of Workers Act under which foreign employers who post workers in Sweden shall be obliged to notify the Swedish Work Authority if the activity

continues for more than five days. As regards the reduction in collective agreements signed with Byggnads, the Confederation considers that this cannot be attributed to the changes in the law, given that the amended legislation only came into force in April 2010 and therefore could not be responsible for the reduction between 2007 and 2010. In Sweden, wage-setting is a matter for the labour market parties, largely through the signing of collective agreements in each sector. The Confederation has difficulty understanding the argument advanced by the LO and the TCO that the fact that, in situations involving posting of workers, they are only able to take industrial action to demand the minimum levels set out by collective agreements opens the door to social dumping. To the contrary, it appears that the unions want to demand higher wages for foreign companies than Swedish companies in similar situations.

On this last point, the Committee understands that the concerns raised by the unions are not related to a desire to have better terms and conditions of employment for foreign posted workers than those set out in collective agreements, but rather that they would like to ensure that those terms are comparable to those in the relevant sector and geographic area and are not based on an often non-existent central minimum.

In its latest comment, the LO and TCO consider the plans to submit a bill requiring foreign employers to appoint a contact person in Sweden would be an improvement but remain concerned that, even with a counterpart, there is no requirement that the representative of the employer will be mandated to negotiate and conclude collective agreements. As regards the statistics provided by the Government, the LO and the TCO consider that the most telling are those concerning the reduction in collective agreements concluded after the *Laval* judgment. In this regard, they indicate that the Byggnads concluded 356 collective agreements with foreign companies between 2004 and 2007 (about 120 agreements per year). After the ECJ judgment in 2007 creating a new legal situation on the labour market, the number of agreements fell dramatically. This situation was made even worse by the 2010 changes in the Swedish legislation.

***The Committee welcomes the plans to submit a Bill, at the latest on 30 November 2012, whereby a foreign employer must report that it posts workers to Sweden and appoint a contact person in Sweden, who shall be authorized to receive notice on behalf of the employer and hopes that this will facilitate engagement in collective bargaining with foreign employers. The Committee requests the Government to indicate the developments in this regard in its next report.***

The Committee further notes the comments of the LO and the TCO that there are an increasing number of “double agreements” in foreign companies which set terms at a very low level and then provide a second agreement only for presentation to the authorities and the trade union setting out better terms. The Committee further expresses its **concern** that foreign companies may be exempt from collective bargaining demands provided they only “show” that minimum pay and conditions pertain. ***The Committee requests the Government to reply to these comments and to continue to provide information on any measures taken or envisaged to combat this practice.***

## Switzerland

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

The Committee notes the communications from the International Trade Union Confederation (ITUC) on 31 July 2012, from *Travail.Suisse* on 24 August 2012 and from the Swiss Federation of Trade Unions (USS/SGB) on 30 August 2012 containing observations on the application of the Convention. It notes the recent Government’s response to this communication and it will examine it in its next reporting cycle.

***Articles 1 and 3 of the Convention. Protection against anti-union dismissals.*** The Committee recalls that its last comments addressed the difference of opinion between the Government and the trade unions on the degree of protection of trade union delegates and representatives against anti-union dismissals. While the trade unions considered that this protection was not adequate on the basis of cases ruled on by courts, the Government maintained that Swiss law offers adequate protection and fully respects the Convention; and that 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 nevertheless indicated 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, for the purpose of looking into an increase of the maximum penalty. In September 2010, therefore, the Government was to hold consultations with the social partners on improving protection against unfair dismissals, including dismissal on anti-union grounds. The Committee had welcomed this initiative and asked the Government to indicate the outcome.

The Committee notes the Government’s indication that the said consultation, which ended in January 2011, revealed strongly conflicting opinions on the need to review the Code of Obligations on the issue of protection against dismissals and that the Federal Council must take a policy decision on actions to be taken on the draft review. The Committee also notes the observations of *Travail.Suisse* and the USS/SGB which confirm that the consultations ended in January 2011, regret the fact that the Federal Council still has not brought this issue before Parliament over a year and a half after public consultation and objects to the continuation of anti-union dismissals. In this regard, the Committee notes the various cases

cited by the USS/SGB and the indication that the Federal Court considered, in a recent ruling of 19 March 2012, that an improvement in the protection of workers' representatives can be implemented only through an amendment to the law.

In these circumstances the Committee is bound to recall its opinion that the applicable compensation for unfair dismissal (up to six months' wages) may be a deterrent for small and medium-sized enterprises, but that this is not so for high productivity enterprises or large enterprises. ***The Committee requests the Government to indicate the action taken by the Federal Council to follow up the public consultation on improving protection against unfair dismissals. More generally, and despite the conflicting positions reported, the Committee invites the Government to maintain open tripartite dialogue on the issue of adequate protection against anti-union dismissals in the light of its comments.***

***Article 4. Promotion of collective bargaining.*** The Committee notes the latest statistical information available from the Federal Statistics Office on collective agreements concluded in the country and the number of workers covered. ***The Committee requests the Government to continue 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 Government's reply to the comments submitted by the International Trade Union Confederation (ITUC) on 4 August 2011, in which it indicates the following: (1) unions are independent, and their independence is guaranteed under several national laws, including in articles 10 and 45 of the new Constitution promulgated on 27 February 2012; (2) the trade union movement is united, from an organizational perspective, in virtue of the decisions taken by trade unions' confederations and of the new Constitution (article 8) which recognizes political pluralism; and (3) the trade union movement is a pyramidal hierarchy that preserves the legal entity of trade unions, their autonomy and their right to be in possession of property, to defend the interests of their workers and represent them, and to conclude collective agreements and collective contracts.

The Committee notes the comments submitted by the ITUC of 31 July 2012 on the application of the Convention and, in particular, alleging that protests were violently put down throughout the year, that there were deaths and arrests as a result and that the authorities have attempted to stem protests through the increasing use of police and paramilitary force, arrests, trials and the imprisonment of political and human rights activists. The ITUC further alleges that a growing number of strikes are met with violence, injury and often killings. ***The Committee requests the Government to provide its observations on these serious comments.***

The Committee notes the adoption of Labour Law No. 17 in 2010, as well as the new Constitution in 2012.

***Article 2 of the Convention. Scope of application.*** Sections 1 and 5(1), (2) and (4) to (7) of Labour Law No. 17 exclude certain workers from the scope of the law (independent workers, civil servants, agricultural workers, domestic servants and similar categories, workers in charity associations and organizations, casual workers and part-time workers whose hours of work do not exceed two hours per day). ***Recalling that these workers are covered by the Convention, the Committee requests the Government to indicate whether the rights enshrined in the Convention are provided to these workers by other legislation, and, if this is not the case, to take measures to recognize to these workers, in the legislation, the rights enshrined in 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 recalls that the Government indicates in its report that the trade union movement is united, from an organizational perspective, in virtue of the decisions taken by trade unions' confederations and that the Constitution (article 8) recognizes political pluralism. ***Noting the Government's information, the Committee requests the Government to indicate in its next report the measures taken or contemplated 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, according to the Constitution, trade unions have the right to supervise and inspect their financial resources, without any interference, through a supervision and inspection body elected directly by trade unions. ***Taking into full account the information provided by the Government, 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. 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 General Federation of Trade Unions (GFTU) Congress and its presiding officers (section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84). 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 on freedom of association and collective bargaining, 1994, 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.**

*Right to strike. Penal sanctions.* 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 further notes that no reference is made to the possibility for workers to exercise their right to strike in the chapter on collective labour dispute of Labour Law No. 17 of 2010. The Committee notes the Government's indication that the GFTU is working to modify the Labour Law in order to ensure coherence with articles of the Constitution granting workers the right to strike. **The Committee hopes that the law will be amended so as to bring it into conformity with the principles of freedom of association and requests the Government to provide information on any developments in this regard.**

**The Committee expresses the hope that the measures envisaged to bring the legislation into 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 observations of the Government on the 4 August 2011 International Trade Union Confederation (ITUC) comments. The Committee notes the comments made by the ITUC on 31 July 2012 concerning issues that have been raised in the past, including the fact that collective bargaining hardly exists, as well as allegations that, while the right to collective bargaining is recognized in Labour Law No. 17 of 2010, the Ministry of Social Affairs and Labour has vast powers to object to and refuse the registration of concluded collective agreements. **The Committee requests the Government to provide its observations on the 2012 ITUC comments.** The Committee also notes the claim of the ITUC that, while the state of emergency that has been in place since 1963, with heavy restrictions on civil and political rights and trade unions under the full control of the regime, was finally lifted in April 2011 in response to protestor's demands, at the end of 2011 the situation in the Syrian Arab Republic was seen as increasingly one of civil war.

The Committee noted, in its previous observation, the adoption of Labour Law No. 17 of 2010, which contains a chapter on collective bargaining (sections 178–202). In this respect, it draws the attention of the Government to the following issues.

*Scope of the Convention.* Sections 1 and 5(1), (2) and (4)–(7) exclude certain workers from the scope of the law (independent workers, civil servants, agricultural workers, domestic servants and similar categories, workers in charity associations and organizations, casual workers and part-time workers whose hours of work do not exceed two hours per day). **Recalling that these workers are covered by the Convention, the Committee requests the Government to indicate whether the rights enshrined in the Convention are provided to these workers by other legislation, and, if this is not the case, to take measures to recognize to these workers, in the legislation, the rights enshrined in the Convention.**

*Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference.* The Committee notes that section 67(a) states that, according to section 67, employers may not dismiss a unionized worker performing, organizing or taking part in trade union activities; in case reinstatement is not possible, section 67(c) provides that compensation equals two months' wages for each year in service. In this respect, the Committee underlines the need to reinforce the sanction against anti-union dismissal by providing sufficiently dissuasive sanctions. **The Committee hopes that the Government will take the necessary measures to amend this provision.** The Committee further notes that the Labour Law does not prohibit acts of interference on the part of employers or organizations of workers in each other's affairs, in accordance with the Convention. **The Committee requests the Government to take measures in order to adopt clear and precise provisions prohibiting acts of interference accompanied by sufficiently dissuasive sanctions.**

*Article 4. Collective bargaining.* Section 187(c) states that, during the 30-day period between filing the agreement and having it approved by the Ministry of Social Affairs and Labour, the Ministry may object to and refuse to register the

agreement, and inform contracting parties, by registered letter, of such objection/refusal and the reasons thereof. The Committee underlines that this provision grants excessive power to the Ministry to object or refuse to register a collective agreement. The Committee recalls that such an objection/refusal to register a collective agreement may only be made on the basis of a procedural flaw or because it does not conform to the minimum standards laid down by the labour legislation. ***The Committee requests the Government to take measures to amend this provision in order to fully guarantee the principle of free and voluntary collective bargaining established in the Convention.***

The Committee notes that section 214 states that, in case mediation does not result in an agreement, either party may file a request to initiate dispute settlement through arbitration. The Committee recalls that, in general, arbitration to end a collective labour dispute is acceptable if it is at the request of both parties involved in a dispute, or with regard to disputes in essential services in the strict sense of the term, or in respect of civil servants exercising authority in the name of the State. ***The Committee requests the Government to take the necessary measures to ensure that arbitration initiated by only one party to the dispute can only take place in the cases mentioned above.***

***Arbitration bodies.*** According to section 215, arbitration tribunals are composed of a chairperson and a member, appointed by the Ministry of Justice, a member appointed by the Ministry of Social Affairs and Labour, one member appointed by the General Federation of Trade Unions and one member appointed by the Federation of Chambers of Industry, Commerce and Tourism, or the Contractors Association at the governorate level. The Committee underlines that the composition of the arbitration tribunal could raise questions concerning its independence and impartiality and could call into question the confidence of the concerned parties in such a system. ***The Committee requests the Government to take measures to amend this provision so as to ensure that the composition of the arbitration tribunals is balanced and can engender the confidence of the parties in the arbitration mechanism.***

***The Committee hopes that legislation and practice will be brought into line with the Convention and requests the Government to provide information on any developments in this regard.***

## United Republic of Tanzania

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

The Committee takes note of the comments dated 31 July 2012 from the International Trade Union Confederation (ITUC) concerning issues already raised by the Committee.

***Articles 2 and 3 of the Convention.*** *Right of workers and employers, without distinction whatsoever, to establish organizations without previous authorization. Right of organizations to organize their activities and to formulate their programmes freely.* The Committee notes the Government's report which merely indicates that the issues raised by the Committee in its previous comments will be brought to the attention of the Labour, Economic and Social Council (LESCO) which will then advise the minister on measures to be taken. ***The Committee trusts that the Government will provide in its next report full details on measures taken in consultation with the social partners to comply with its comments and bring its legislation into conformity with the Convention on the following issues:***

- the need 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 need to determine 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 law. In the meantime, the Committee recalls that only the armed forces and the police may be excluded from the application of the Convention (*Article 9* of the Convention);
- the need to amend the ELRA which does not provide for specific time limits within which the registration procedure of an organization should be concluded and to adopt a provision determining a reasonable time period for the processing of applications for registration of employers' and workers' organizations; and
- the need to amend section 4 of the ELRA so that restrictions on protest actions are limited to a rights dispute; as well as section 76(3)(a) which prohibits picketing in support of a strike or in opposition to a lawful lockout.

***Public sector.*** In its previous comments, the Committee requested the Government to amend section 26(2) of the Public Service (Negotiating Machinery) Act (No.19 of 2003) requiring certain conditions to be satisfied for civil servants to take part in a strike, since the provision could constitute an act of interference in trade union activities (the supervision by the administrative authority of a strike ballot under section 26(c)), could unnecessarily hinder the possibility of carrying out a strike (the requirement of a decision of the majority of the public servants of the respective service scheme for the calling of a strike under section 26(c)) and could constitute an obstacle to collective bargaining (a 60 days' notice to be served to the Government from the date of the ballot under section 26(d)). The Committee notes the Government's indication according to which the ELRA also applies to workers in the public service in Mainland Tanzania and that it is provided under section 80(1) of the said Act that a strike has to be called by a trade union and a ballot is conducted under the union's constitution. Thus, the public servants have the right to choose either the Public Service (Negotiating Machinery) Act or the ELRA. The Government adds as an example that the Teachers' Trade Union called a strike under

the ELRA. *While taking due note of the possibility for workers in the public sector to call a strike under the ELRA, the Committee considers that section 26(2) of the Public Service (Negotiating Machinery) Act should be put in line with the relevant provisions of the ELRA in order to align the two pieces of legislation and requests the Government to indicate any development in this regard.*

In its previous comments, the Committee noted that no service had been designated as essential by the Essential Services Committee pursuant to section 77 of the ELRA, and recalled 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. *While noting the indication from the Government that the principles outlined by the Committee are under consideration, the Committee hopes that while establishing a list of essential services the abovementioned principle will be fully taken into account.*

### Zanzibar

*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 review and amend section 2(2) of Labour Relations Act (No. 1 of 2005) (LRA), which excludes the following categories of employees from the LRA's provisions: (a) judges and all judiciary officers; (b) members of special departments; and (c) employees of the House of Representatives. The Committee notes the Government's indication according to which social partners are engaged in consultations to the effect of amending section 2(2). *The Committee requests the Government to indicate any progress made in this regard.*

*Right of workers and employers to establish organizations without previous authorization.* In its previous comments, the Committee had 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 notes the Government's indication according to which draft regulations for the implementation of the Act are awaiting publication. *The Committee requests the Government to provide a copy of the regulations for the implementation of section 21(1)(c) of the LRA once adopted.*

*Article 3. Right of organizations to organize their administration and activities and to formulate their programmes.* In its previous comments, 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. The Committee notes that the Government indicates in its report that the social partners are engaging into consultations taking into account the comments of the Committee. *The Committee requests the Government to indicate any progress made in this regard.*

Finally, the Committee takes due note of the requests for technical assistance from the Government on a number of amendments to the LRA requested by the Committee. It notes that social partners will be engaged in consultations on the issues raised. *The Committee hopes that the technical assistance of the Office will be provided to the Government in the near future and that the Government will be in a position to report on progress made to bring its legislation in full conformity with the Convention on the matters recalled hereunder:*

- the need to amend sections 64(1) and 64(2) of the LRA, which set forth categories of employees that may not participate in a strike, without any additional indication, and list several services that are deemed essential, including sanitation services, and in which strikes are forbidden. In this regard, 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, that is 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 need 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. The Committee requested the Government to shorten this 44-day period (to a maximum of 30 days, for example). The Committee 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;
- the need to amend section 41(2)(j) of the LRA so that institutions a trade union may wish to contribute to are not subject to the Registrar's approval.

### **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 31 July 2012, according to which employers in the private sector often deny the right of workers to organize and to bargain collectively. Moreover, according to the ITUC, any collective agreement agreed upon must be

submitted to the industrial court for approval and may be refused if it does not conform to the Government's economic policy. ***The Committee requests the Government to provide its reply to the ITUC communication, in particular in the light of the new Labour Act.*** While awaiting the reply from the Government, the Committee recalls that provisions which prescribe the obligation to submit a collective agreement for prior approval by the authorities are only compatible with the Convention when they are confined to stipulating that approval may be refused if the agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. On the other hand, if legislation allows the authorities full discretion to deny approval or stipulates that approval must be based on criteria such as compatibility with the general or economic policy of the government, or official directives on wages and conditions of employment, it in fact makes the entry into force of the agreement subject to prior approval, which is in violation of the principle of the autonomy of the parties (see General Survey on the fundamental Conventions, 2012, paragraph 201).

***Scope of the Convention.*** The Committee previously raised a number of points concerning the 2003 Public Service (Negotiating Machinery) Act. In particular, it requested the Government to provide information 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. In this regard, the Committee notes the indication according to which its comments have been forwarded to the Labour, Economic and Social Council for further consultations and any progress made or any difficulty encountered will be reported. ***The Committee trusts that the next report of the Government will indicate concrete measures taken to determine the types of workers included in the national service and to ensure to prison staff the rights enshrined in the Convention.***

***Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference.*** In its previous comments concerning the Public Service (Negotiating Machinery) Act the Committee also requested the Government to provide information 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. The Committee notes that, while acknowledging that section 29 of the Act only prohibits acts of discrimination against a public servant who takes part in a strike or lockout, the Government refers to the Employment and Labour Relations Act (No. 6 of 2004), which applies to all workers, including those employed in the public sector in Mainland Tanzania. The Government specifies that section 7(1) of Act No. 6 of 2004 prohibits discrimination in the workplace and strives to eliminate discrimination in any employment policy and practice. Moreover, section 37(3) of the Act prescribes that it should not be a fair reason to terminate the employment of an employee for the reason that such employee belongs, or belonged, to any trade union, or participated in the lawful activities of a trade union including a lawful strike. The Committee also notes that, according to section 40 of the Act, if an arbitrator or a labour court finds that a termination is unfair, it may order the reinstatement of the employee without loss of remuneration or the payment of compensation of not less than 12 months' wages. Where an order of reinstatement is made and the employer decides not to reinstate the employee, the employer shall pay compensation of 12 months' wages in addition to wages due and other benefits from the date of unfair termination to the date of the final payment. The Committee takes due note of this information.

***Article 4. Compulsory arbitration.*** With regard to its previous comments concerning compulsory arbitration that may be imposed under the Public Service (Negotiating Machinery) Act, the Committee recalled 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 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. Thus, the Committee requested the Government to amend sections 17 and 18 of the Public Service (Negotiating Machinery) Act, so as to ensure their full conformity with these principles. ***While noting the indication that the Government intends to work on the issue, the Committee trusts that its next report will contain information on progress made in this regard.***

## Zanzibar

***Article 4. Trade union recognition for purposes of collective bargaining.*** The Committee previously requested the Government to amend section 57(2) of the Labour Relations Act of 2005 (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. The Committee also requested 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. The Committee notes the Government's indication that minority unions enjoy collective bargaining rights in cases where no union represents 50 per cent of the workers concerned. ***While inviting the Government to indicate the legal provisions in support of its statement, the Committee recalls the importance that the legislation establishes clearly that where no union covers more than 50 per cent of the workers in a bargaining unit, the minority unions should be allowed to enter into collective bargaining, at least on behalf of their members. The Committee requests the Government to indicate any development, in both law and practice, as well as to provide examples and statistics, including as regards minority unions that have exercised collective bargaining where no union represents 50 per cent of the workers concerned.***

Furthermore, the Committee had requested the Government to ensure that the rules and regulations being drafted for the implementation of the LRA will provide for objective procedures and criteria for the determination of representative

trade union status. The Committee notes the Government's indication that draft regulations are awaiting publication and will soon be communicated. ***The Committee requests the Government to provide a copy of the regulations once promulgated.***

*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 collective bargaining with respect to salaries and other conditions of employment, 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 notes the Government's indication that social partners are engaged in consultations on this matter and that the Government is requesting technical assistance in this regard. ***The Committee hopes that the technical assistance of the Office will be provided to the Government in the near future and that the latter will be in a position to report on progress made in this regard.***

## The former Yugoslav Republic of Macedonia

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

*Comments made by trade unions.* The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) concerning mostly questions already examined by the Committee.

*Article 4 of the Convention. Collective bargaining.* In its previous comments, the Committee 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' association meets the legal requirement for representativeness (sections 219 and 221 of the Labour Relations Law). The Committee notes that the Government indicates in its report that: (1) the representativeness criteria for trade unions and employers associations were defined and harmonized with social partners (the Government sent the rules of procedures for the determination of representativeness attached to its report); (2) employees have the right to form more than one trade union at the enterprise level; (3) in case there exists more than one trade union at the enterprise level, those trade unions are representative and may establish the Negotiation Board; (4) employers' associations have the same right; and (5) trade unions regulate not only the percentage of representation in the Negotiation Board, but also the selection procedures, the negotiation methods and the persons authorized to sign the collective agreement.

*Representativeness.* The Committee noted that section 213(c) of the Labour Relations Law provides that the application to the Commission for establishment of representativeness to bargain collectively shall be filled by a trade union at a higher level. The Committee requested the Government to indicate if section 213(c) allows trade unions at enterprise level or industry level to apply for their representativeness to be established. The Committee notes that the Government indicates that sections 213(b) and 213(c) only applies to determine trade union representativeness at national and branch levels; these provisions do not apply to trade unions at enterprise level or industrial level as this matter is regulated by another provision. The Committee notes that, in its reply to the ITUC comments on this matter, the Government adds that the criteria for representativeness does not limit the right to collective bargaining but constitutes a precondition for the conclusion and the coverage of collective agreements. ***The Committee requests the Government to indicate whether, in practice, there are collective agreements at the branch level.***

*Conclusion of general collective agreements.* In its previous comments, the Committee noted that section 205 of the Labour Relations Law provides that the general collective agreement for the private sector (industry) and for the public sector are applied directly and are mandatory for employers and employees in the respective sectors. The Committee requested the Government to clarify whether these collective agreements can only be concluded by the most representative trade union organizations at the national level. The Committee notes that, according to the ITUC, at national level the representative union must represent 10 per cent of the total labour force. The Committee also notes that the Government indicates that: (1) the general collective agreement for the private sector is concluded by the representative association of employers and the representative trade union for the private sector; and (2) the general collective agreement for the public sector is concluded by the representative trade union in the public sector and the Minister in charge of labour matters. The Committee notes this information with *interest*, in particular observing that the ITUC considers as a progress the collective agreements concluded in the public sector.

*Part IV of the report form. Application in practice.* ***The Committee requests the Government to provide information on the application in practice of the Convention, including statistical data concerning the number of collective agreements concluded in both private and public sectors and the number of workers covered.***

***Finally, the Committee requests the Government to send its observations concerning the ITUC allegations according to which: (1) the judicial proceedings in case of anti-union discrimination take two to three years to be resolved; and (2) labour inspection does not function in an efficient manner.***



## Timor-Leste

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 2009)

The Committee notes the Government's first report as well as the adoption of Act No. 4/2012 enacting the Labour Code.

*Article 1 of the Convention. Protection against anti-union discrimination.* The Committee notes with **satisfaction** that sections 45, 55 and 81 of the new Labour Code prohibit acts of anti-union discrimination on the grounds of trade union affiliation or activity, stipulate that anti-union dismissals shall be deemed null and void and provide for reinstatement and compensation of the worker.

The Committee further notes the comments of the International Trade Union Confederation (ITUC) dated 31 July 2012 on the application of the Convention. **The Committee requests the Government to provide its observations thereon.**

## Togo

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1983)

*Observations by the International Trade Union Confederation (ITUC).* The Committee notes the ITUC's observations, dated 31 July 2012, on the lack of dialogue with the trade union organizations recently established in the export processing zones, especially with respect to the revision of legal texts on working conditions in the export processing zone. **The Committee requests the Government to submit its observations in reply to the allegations made by the ITUC.**

*Article 4 of the Convention. Bargaining between employers' and workers' organizations in practice.* The Committee notes with **interest** the Government's indication that the inter-occupational collective agreement has been revised following negotiations held in 2011 between the National Employers' Council of Togo and six central trade union confederations; this collective agreement entered into effect in January 2012 and was extended to all sectors of activity and all non-signatory social partners pursuant to the Government order of 21 August 2012. The Committee also notes that bargaining is under way in the banking and insurance sector, in oil companies and in the oil transport services with a view to revising their respective collective agreements. Finally, the Committee notes that negotiations have also begun or are planned in various sectors such as the media, private teaching, work in the export processing zone, private health institutions, as well as the trade and services sectors. The Committee notes the figures provided by the Government on the number of workers covered by collective agreement in the public and private sectors, as well as in the export processing zone. Finally, the Committee takes note of the various measures taken by the Government to promote collective bargaining by means of social dialogue forums or the national media. **The Committee requests the Government to continue providing detailed information on the collective agreements concluded, the sectors and number of workers covered, and the measures taken by the authorities to promote collective bargaining.**

*Compulsory arbitration.* The Committee recalls its previous comments on section 260 of the Labour Code which stipulates that, in the event of persistent disagreement between the parties to collective bargaining on certain points in a collective dispute, the Minister of Labour might submit the matter to a arbitration board following the failure of conciliation. The Committee noted that the section in question was contrary to the principle of the autonomy of the parties and the principle of free and voluntary negotiation envisaged in the Convention. It had consequently requested the Government to amend the legislation with a view to providing that compulsory arbitration was only possible upon 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 or in a case of acute national crisis. The Committee notes the Government's indication that it undertakes to initiate consultations in the tripartite dialogue bodies on the possibility of amending the settlement procedure of collective labour disputes. **The Committee requests the Government to inform it of any new developments concerning the amendment of section 260 of the Labour Code to bring it in line with the principles of the Convention.**

## Trinidad and Tobago

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

*Article 3 of the Convention. Right of organizations to organize their activities freely and to formulate their programmes.* In its previous comments, the Committee has been referring for a number of years to the need to amend or repeal the following sections of the Industrial Relations Act (IRA): (1) section 59(4)(a) concerning the majority required for calling a strike; (2) sections 61(d) and 65 concerning recourse to the courts by either party or by the Ministry of Labour to end a strike; and (3) section 67 (in conjunction with the second schedule) and section 69 concerning services in which industrial action may be prohibited.

The Committee notes that the Government indicates in its report that: (1) the Industrial Relations Advisory Committee was established in February 2012, with the mandate, as stated in section 81 of the IRA, to keep this Act under review; (2) it has already commenced its review of the IRA with a view to making proposals to the minister for its development and reform, including in particular the modification of any of the provisions thereof; and (3) while noting that it can avail itself of the technical assistance of the ILO, the Government proposes to do so as work of the Industrial Relations Advisory Committee proceeds and should the need arise. ***The Committee takes note of these indications and hopes that concrete measures will be taken in the near future to amend or repeal the abovementioned sections of the IRA. The Committee requests the Government to indicate in its next report any progress made in this respect.***

Finally, the Committee notes the comments from the International Trade Union Confederation (ITUC) dated 31 July 2012 which refer to issues already raised by the Committee. It also notes the Government's reply to the comments made by the ITUC in 2008 and 2010, in particular that the alleged denial of the right of domestic workers to legally join trade unions is not accurate, and that the National Union of Domestic Employees was part of the tripartite delegation of Trinidad and Tobago and an active participant in the discussion of the Domestic Workers Convention, 2011 (No. 189), and Recommendation, 2011 (No. 201).

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1963)***

*Article 4 of the Convention. Representativeness for the purposes of collective bargaining.* In its previous comments, the Committee has been referring to the need to amend section 24(3) of the Civil Service Act, which 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 notes that the Government indicates that the matter of amendment of section 24(3) is still under consideration, that it requires extensive continuing dialogue and that efforts will continue to be made to resolve the matter. The Committee recalls 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, including section 24(3), will be modified in the near future so as to bring it into conformity with the principles of the Convention, and requests the Government to indicate any developments in this regard.***

In its previous comments, the Committee also referred to the need to amend section 34 of the Industrial Relations Act (IRA) in order to ensure that, in cases in which no trade union represents the majority of workers, the minority unions can jointly negotiate a collective agreement applicable in the negotiating unit, or at least conclude a collective agreement on behalf of their own members. The Committee notes the Government's indication that an Industrial Relations Advisory Committee was established in February 2012 in accordance with Chapter 88:01 of the IRA for the purpose of keeping the IRA under constant review. The Government indicates that the Advisory Committee has commenced its review of the IRA with a view to making proposals for its development and reform, including the amendment of any of its provisions. The Committee notes that the Government states that it has noted that it can avail itself of the technical assistance of the Office and proposes to do so as the work of the Advisory Committee proceeds and should the need arise. ***The Committee expresses the hope that 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 workers. The Committee requests the Government to communicate progress on these issues in its next report.***

*Comments of the International Trade Union Confederation (ITUC).* ***The Committee requests the Government to provide its observations on the ITUC's 2012 comments.***

## **Tunisia**

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

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee. It also notes the comments from the International Trade Union Confederation (ITUC) dated 31 July 2012, referring to issues of a legislative nature already raised by the Committee, as well as to infringements of trade union rights in practice, specifically obstacles to journalists' trade union activities. ***The Committee requests the Government to provide its observations in reply to the ITUC's comments.***

In its last observation, the Committee noted the election of a Constituent Assembly on 23 October 2011, with the mandate, inter alia, to draw up a new Constitution, and hoped that, as part of the legislative reform movement that should accompany the adoption of a new Constitution, the issues which had been the subject of its comments for many years would be taken into account. In this respect, the Committee notes with *regret* that the Government does not refer in its

report to the progress made in amending the legislation. It therefore feels bound to reiterate the comments it has been making for a number of years.

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing.* As regards the request for information concerning the way in which the Government ensures that magistrates enjoy the guarantees afforded by the Convention, the Committee notes that, according to the Government, magistrates established an independent trade union grouping more than 1,200 magistrates within the judiciary on 18 March 2011; the magistrates of administrative courts have initiated a process to establish their own trade union.

As regards its request concerning the need to amend section 242 of the Labour Code, which stipulates that minors aged 16 years and over may belong to trade unions, if there is no opposition from their father or guardian, the Committee notes the Government's statement that, as the age of majority was reduced from 20 to 18 years in 2010, this is only an issue for minors aged between 16 and 18 years; the protection put in place is prompted by legal considerations connected to the parent's or guardian's exercise of authority in accordance with section 93bis of the Code of obligations and contracts. The Government also points out that the provisions of section 242 of the Labour Code have not given rise to any objections or problems in practice. ***Recalling the need to guarantee that minors having reached the statutory minimum age for employment (16 years according to section 53 of the Labour Code) should be able to exercise their trade union rights without authorization from their parent or guardian, the Committee urges the Government to amend section 242 of the Labour Code in this respect.***

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes without interference from the public authorities.* As regards the question of determining the representativeness of trade unions in the higher education sector, the Committee notes that, in the context of Case No. 2592 of the Committee on Freedom of Association (358th Report), the Government stated that it had taken steps to develop objective criteria to determine the representativeness of the social partners pursuant to section 39 of the Labour Code. The Government had indicated that in the event of disputes concerning trade union representativeness, it was the number of members which determined representativeness for the purposes of collective bargaining in the absence of pre-established criteria. ***The Committee requests the Government to provide information on the steps it states it has taken and their outcome.***

*Right of organizations to elect their representatives in full freedom.* As regards its observation on the need to amend section 251 of the Labour Code so as to guarantee 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, the Committee notes the Government's indication that section 263 of the Labour Code enshrines the principle of equal treatment between foreign and national workers and that approval by the public authorities of the appointment or election of foreign workers to an administrative or managerial position within a trade union is merely an administrative control of their eligibility, ascertaining that the foreign worker has lived for a reasonable length of time in the country. The Government points out, moreover, that there has never been recourse to this requirement and that the employers' and workers' organizations have never made comments concerning its application. ***Notwithstanding this fact, the Committee feels bound to request the Government once again to amend section 251 of the Labour Code to ensure that the principle recalled above be respected both in law and in practice.***

*Right of workers' organizations to organize their activities and formulate their programmes.* The Committee recalls that it has been making comments for a number of years on certain restrictions to the right to strike, which include: approval of the central workers' confederation before declaring a strike (section 376bis(2) of the Labour Code); compulsory indication of the duration of the strike in the strike notification (section 376ter of the Labour Code); determination of the list of essential services by decree (section 381ter of the Labour Code); and the possibility of imposing penalties in the event of an unlawful strike (sections 387–388 of the Labour Code). The Committee notes the Government's statement in its report to the effect that: section 376bis(2) of the Labour Code does not raise any problems in practice and the workers' organizations have not made any observations on its application; no time limits are established in section 376ter of the Labour Code, and the organizers of the strike are entirely free to choose the duration of the strike and to continue it as they wish; the decree referred to in the last paragraph of section 381ter has not yet been adopted; the imposition of penalties provided for under section 388 of the Labour Code is contingent upon the court's assessment and the level of severity of the offences. ***The Committee requests the Government to take the necessary measures in the near future to amend these sections of the Labour Code to guarantee respect of the principles of freedom of association to which it has been referring for many years.***

***The Committee requests the Government to provide information in its next report on progress made in amending the legislation. It reminds the Government that it may avail itself of technical assistance from the Office with regard to these issues.***

## 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 Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee also notes the observations provided by the Government on the 2011 comments of Education International (EI) and the Turkish Union of Public Employees in the Education, Training and Science Services (TÜRK-SEN), as well as those of the International Trade Union Confederation (ITUC). The Committee notes the comments submitted by the ITUC in a communication dated 31 July 2012, alleging notably several cases of violence against trade unionists, the sentencing and imprisonment of 25 teachers and one leather worker, as well as the prosecution faced by 111 workers for participating in a demonstration. The Committee also notes the communication of EI, dated 31 August 2012, alleging the arrest and imprisonment of members of the Confederation of Public Employees (KESK), the police raid of KESK offices and of KESK affiliate trade unions members' houses, as well as police violence. The Committee recalls that in its previous observation it had also noted the comments submitted by EGITIM-SEN. ***The Committee requests the Government to provide its observations thereon.***

*Civil liberties.* The Committee recalls that for a number of years it has been commenting upon the situation of civil liberties in Turkey. It has been observing with concern the allegations of important restrictions placed on freedom of speech and assembly of trade unionists, including numerous cases of violence against trade unionists, as well as arrests, again contained in the above-noted 2012 ITUC and EI communications. With regard to the EI 2011 communication alleging: (1) police searches in the KESK offices on 28 May 2009, the arrest of some members as a result, and the abroad travel ban imposed on those arrested, the Government states that the searches were limited to certain rooms and that a number of detained suspects were condemned to prison for being part of a terrorist organization by the High Penal Court on 28 November 2011, which therefore explains the travelling ban; (2) the search of the EGITIM-SEN office on 21 June 2011, where property was damaged and members were later taken into custody, the Government indicates that this search was within the scope of anti-terrorist activities, that no property was damaged and that the members' lawyers were present during the custody and the searches; (3) the use by the police of tear gas against EI members attending a solidarity demonstration on 31 March 2010, the Government indicates that security forces were attacked with stones and sticks and several were injured as a result and that tear gas was used as one of the proportionate intervention tools; (4) the arrest, beating and injury of several EI members during a demonstration, the Government states that security forces intervened as they, along with police vehicles and public buildings, were attacked with stones and sticks; (5) several violations of freedom of speech and assembly (some demonstrations were not allowed for "security" reasons, or because there was no adequate place for them to be held, demonstration organizers have been imprisoned for not informing local authorities of the demonstration, and court cases have been launched against them for violating Act No. 2911), and that the right to peaceful demonstration may not be exercised in practice because of the intervention of the Government and the police, the Government confirms that several legal actions for violating Act No. 2911 have been launched. As to the ITUC's allegation of judicial harassment, the Government indicates that all individuals have equal rights and responsibilities before the law no matter which position or title they have.

The Committee notes with **concern** the new allegations of restrictions placed on freedom of association and assembly of trade unions. In its report, the Government explains that arrests of trade union members were made because terrorist organizations have infiltrated non-governmental organizations to take advantage of the opportunities of these organizations in accordance with the demands of the terrorist organizations. No union or institution has been interfered with and the Government qualifies as unsubstantiated the claim that people are detained due to union actions. The Government indicates that regular training for prevention of disproportionate use of force is provided to riot police units and that 17,000 riot police are being trained annually, including on human rights compliance. Moreover, the Government indicates that a project on prevention of use of disproportionate force by police, conducted under the General Directorate of Education within the General Directorate of Security, started in September 2011 and is expected to be completed by the end of 2013. A directive to regulate the intervention principles of personnel deployed in social events entered into force on 15 August 2011. The Committee takes note of the measures taken by the Government. ***The Committee recalls that respect for civil liberties is an essential prerequisite to freedom of association and 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 again urges the Government to review, in full consultation with the social partners, any legislation that might be applied in practice in a manner contrary to this fundamental principle and to consider any necessary legislative amendments or abrogation. It requests the Government to provide information on all measures taken in this respect and to send a copy of the Directive regulating intervention principles of personnel in social events. The Committee also requests the Government to carry out an investigation into the new allegations concerning all the cases of use of violence during police or other security force interventions and to provide information on the ongoing legal proceedings launched for violation of Act No. 2911.***

*Legislative issues.* The Committee notes that Act No. 6289 on public servants' unions and collective agreement, with significant amendments to Act No. 4688, has been adopted on 4 April 2012. The Committee welcomes the fact that this new Act addresses some of the issues raised by the Committee in the past, including lifting the exclusion to the right to form and join trade unions of public employees on probation. However, the Committee notes that the following provisions of Act No. 6289 are not in full conformity with the Convention:

*Article 2 of the Convention:*

- Section 15 which prohibits several categories of workers, such as senior public employees, magistrates, civilian personnel in military institutions and prison guards, to establish and join a trade union.
- Section 7(d) which requires to provide the place of residence of the founders of an organization in its statutes that must be submitted to the office of the Governor of the province in order to be incorporated.

*Article 3. Election of representatives:*

- Section 10(8) 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 upon application that can be made by the Ministry of Labour and Social Security.
- Sections 33 and 34 which provide for the procedures for settlement of disputes by the Public Employees' Arbitration Board and make no mention of the circumstances in which strike action may be exercised in the public service. The Committee recalls the need to ensure that cases in which strikes may be restricted or even prohibited are limited to those involving public servants exercising authority in the name of the State.

***The Committee hopes that the Government, in full consultation with the social partners, will take the necessary measures to bring Act No. 6289 into full conformity with the Convention.***

*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. The Committee notes the Government's indication that no trade union has been audited and that financial reports, within the context of Act No. 2821, are submitted to the Ministry of Interior by trade unions. However, the Committee recalls once again 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.***

The Committee recalls that for a number of years it had been commenting on several provisions of Act No. 2821 on trade unions and Act No. 2822 on collective labour agreements, strikes and lockouts. The Committee has been informed that the Collective Labour Relations Act, amending Act No. 2821 and Act No. 2822, has been adopted by the Parliament on 18 October 2012. The Committee notes in this regard the communication of the Confederation of Progressive Trade Unions of Turkey (DISK) of 30 October 2012 alleging that the new law brings no substantial change in promoting trade union rights and freedoms and even contains some arrangements which will exacerbate existing problems (for example, the double criteria requirement for gaining authorization to engage in collective bargaining has not been removed). ***The Committee requests the Government to provide a copy of this Act as well as to provide its observations with regard to the allegations of the DISK.***

***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 5253 and 6289 and expresses the hope that these amendments will take fully into account its comments above.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1952)***

The Committee notes the observations provided by the Government on the 2011 comments of the International Metalworkers' Federation (IMF) and of the International Trade Union Confederation (ITUC). The Committee also notes the comments made by the ITUC in a communication dated 31 July 2012 alleging violations of collective bargaining rights and numerous cases of anti-union dismissals. ***The Committee requests the Government to provide its observations***

**thereon in its next report.** The Committee is examining the Government's observations on matters raised by Education International (EI) in 2011, as well as the comments submitted by EI on 31 August 2012, in the framework of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* The Committee recalls that in its previous observation it had observed that the ITUC referred to widespread acts of anti-union discrimination in the public and private sectors and had noted that similar allegations were submitted by the Public Employees' Trade Unions (KESK). The Committee requested the Government to indicate 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 noted the observations provided by the Government on the ITUC and the KESK comments. The Government indicated, in particular, that in addition to the abovementioned legislative provisions which, in its view provide for sufficient protection against all types of discrimination, the necessary warnings have been issued by the Government and four circulars have been published by the Office of the Prime Minister on the unacceptability of interference in trade union activities of public employees. The Committee further noted that the Government indicated that no statistical database regarding complaints of anti-union discrimination is kept by the Ministry of Labour and Social Security. The Government further explained that, as regards the public sector, public servants have the right to make written or verbal complaints to their supervisors requesting to investigate cases of trade union discrimination. If the alleged cases are not resolved following this procedure, administrative proceedings can be initiated. The Government informed that the State Personnel Administration possesses statistical information and documents submitted to it by the relevant institutions regarding claims relating to cases of anti-union discrimination in the public sector. ***The Committee once again requests the Government to provide this statistical data.*** It notes once again that in its latest communication, the ITUC refers to cases of reinstatement ordered by the court but alleges that justice is too slow for many. ***Noting once again, however, that no information has been provided by the Government with regard to the public and private sector, the Committee reiterates its previous request for information and expresses the firm hope that the Government will take all necessary measures to ensure that the provisions of the Convention are effectively applied.***

The Committee recalls that in its previous observation it had noted the draft Act on Trade Unions amending Act No. 2821 on trade unions and Act No. 2822 on collective agreements, strikes and lockouts. The Committee notes that this draft, renamed "Collective Labour Relations Act", was submitted to the Prime Minister in October 2011 and was discussed again in a special committee. The Committee understands from the ITUC that this second draft has been condemned by several trade union organizations for containing regressive provisions compared to the existing law and to the first draft law discussed with social partners earlier in 2011. The Committee notes that the Collective Labour Relations Act was adopted by the Parliament on 18 October 2012. ***The Committee requests the Government to send a copy of the Collective Labour Relations Act, amending Acts Nos 2821 and 2822. It expresses the firm hope that the necessary amendments were made to the legislation, taking into account the comments of the Committee concerning remedies and compensation and free and voluntary collective bargaining.***

*Collective bargaining in the public service.* The Committee recalls that it had previously noted that Act No. 5982 of 2010 repealed several provisions of the Constitution which previously restricted collective bargaining rights and granted, by virtue of its section 53, the right to conclude collective agreements to public servants and other public employees, and that these constitutional amendments would be followed by the relevant legislative amendments. The Committee notes that Act No. 6289, with significant amendments to Act No. 4688, has been adopted on 4 April 2012. It notes with ***satisfaction*** that this new Act addresses some of the issues the Committee has raised in the past, notably regarding the scope of collective bargaining which now extends not only to financial questions but to "social rights" (section 28 of Act No. 6289), the need for the parties to be able to hold full and meaningful negotiations over a period of time longer than that previously provided for (extended from 15 days to one month under section 31 of Act No. 6289), the removal of the possibility for the authorities to modify collective agreements signed by the parties and the change of scope of the law from collective "talks" to collective "agreements". The Committee notes, however, that its observations have not been fully taken into account with regard to the need to ensure that: (i) the direct employer participates, alongside the financial authorities, in genuine negotiations with trade unions representing public servants not engaged in the administration of the State; and (ii) a significant role is left to collective bargaining between the parties. The Committee 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, such as civilian personnel in military institutions and prison guards, who are excluded from this right and, therefore, from the right to be represented in negotiations.

Finally, the Committee noted that in its statement before the Conference Committee in 2011, the Government referred to the adoption in February 2011 of an Act providing for a collective agreement premium for members of public servant trade unions and to the abrogation of a criticized provision concerning contract personnel in the public sector. ***The Committee once again requests the Government to provide a copy thereof.***

## 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 near future.***

***The Committee requests the Government to reply to the comments of 31 August 2012 sent by the National Organisation of Trade Unions of Uganda (NOTU) alleging anti-union discrimination practices, as well as the need for a document of recognition delivered by the employers as a condition to be able to engage in collective bargaining.***

Finally, the Committee notes with *satisfaction* the ITUC's statements, according to which the Government has signed a recognition agreement with the public service unions, although the Uganda Public Employees Union (UPEU) would appear not to have been included.

## Ukraine

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

*Article 2 of the Convention.* The Committee recalls that it had previously 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. The Committee notes that in its report, the Government explains that by virtue of article 127 of the Constitution, professional judges cannot be members of trade unions. The Government indicates, however, that by Presidential Decree No. 328/2012 dated 17 May 2012, a special body, Constitutional Assembly, has been established with a specific mandate to prepare draft amendments to the Constitution. In order to ensure the right of judges to establish their organizations, the Ministry of Social Policy addressed the Constitutional Assembly with a request to examine the possibility of amending relevant articles of the Constitution. ***The Committee hopes that the Government's next report will contain information on the developments in this regard.***

The Committee further recalls that it had previously requested the Government to 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. The Committee notes the Government's indication that the Ministry of Social Policy has requested the Ministry of Justice to examine this issue pursuant to the Committee's request. ***The Committee hopes that the necessary amendments to the legislation will be adopted in the near future and that the Government's next report will contain information on the developments in this regard.***

*Article 3.* The Committee recalls that it had requested the Government to take the necessary measures to repeal section 31 of the Law on employers' organizations, which provided that the bodies of the State authority shall exercise control over economic activities of employers' organizations and their associations. The Committee notes with

*satisfaction* the adoption on 22 June 2012 of the Law on employers' organizations and their associations and the Government's indication that this legislation no longer contains provision to that effect.

With regard to the Committee's previous request to take the necessary measures to 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, the Committee welcomes the Government's indication that the draft Labour Code would lower this requirement so as to set it at the majority of workers (delegates) present at the meeting (conference). The Committee notes however, that according to the Government, the draft Labour Code would also provide that an employer is to be invited to the conference. The Committee considers that provisions allowing employers to be present at the meeting when the questions of strike are decided constitute a serious impediment to the exercise of the right to strike. ***It requests the Government to take the necessary measures to ensure that the adopted Labour Code does not contain provisions to that effect. The Committee expresses the hope that the Labour Code will be adopted in the near future and that it will take into account the Committee's comments. It encourages the Government to continue its cooperation with the Office in this respect. It requests the Government to provide information on all progress made with regard to the adoption of the Labour Code.***

The Committee had previously requested the Government to indicate categories of public servants whose right to strike is restricted or prohibited. The Committee notes that the Government reiterates that public servants are prohibited from exercising the right to strike and that a new legislation on Public Service, which will enter into force on 1 January 2013, contains provisions to the same effect. ***Recalling that states may restrict or prohibit the right to strike in the public service, only for public servants exercising authority in the name of the State, the Committee once again requests the Government to list specific categories of public servants whose right to strike is restricted or prohibited and to provide a copy of the new legislation.***

With regard to its previous request to provide information on the practical application of section 293 of the Criminal 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 monthly minimum wages or imprisonment for a term of up to six months and, in particular, in respect of an industrial action, the Committee notes the Government's indication that the Ministry of Social Policy has requested the Ministry of Justice to provide this information. Once this information is provided, it will be forwarded to the Committee. ***The Committee expresses the hope that the Government's next report will contain detailed information on the application of section 293 of the Criminal Code in practice.***

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

The Committee notes a communication dated 4 August 2011 from the International Trade Union Confederation (ITUC) on the application of the Convention, alleging, in particular, acts of anti-union discrimination and interference, poor protection against such acts and reluctance of employers to bargain collectively. The Committee notes the Government's detailed observations thereon.

The Committee further notes the communications dated 8 September 2011 and 5 July 2012 from the Confederation of Free Trade Unions of Ukraine (KVPU) providing its comments on the Act on Social Dialogue, which, with the adoption of the draft Labour Code, will become one of its chapters. In this respect, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2843 (see 362nd Report) in which the latter examined in detail the provisions of the new legislation and concluded that the set thresholds and privileges granted to representative organizations were acceptable under the Convention.

The Committee further notes the ITUC and KVPU communications dated 31 July and 31 August 2012, respectively, referring to the alleged cases of anti-union discrimination, employers' interference in trade union affairs, and refusal by employers to bargain collectively. While noting that in its report the Government indicates that the number of collective agreements in the country increased in 2012 (from 98,500 agreements in 2011 to 101,700 agreements in 2012), the Committee will examine the Government's reply once it is translated into one of the ILO working languages.

*Article 4 of the Convention. Right to collective bargaining.* The Committee had previously requested the Government to provide its observations on the ITUC allegation that, pursuant to the 2004 Model Statutes and Internal Rules for public limited companies, works councils have a mandate for collective bargaining. The Committee notes the Government's indication that, pursuant to the legislation in force (section 12 of the Code of Labour Laws and section 6 of the Act on Social Dialogue), in collective bargaining at the enterprise level, workers are represented by primary trade unions, and that other workers' representatives can be mandated to bargain collectively only in the absence of trade union organizations.



## United Kingdom

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)**

*Workers' and employers' organizations comments.* The Committee takes note of the observations of the Government on the communication of the International Trade Union Confederation (ITUC) dated 24 August 2010 as well as of the detailed comments and information provided by the Trades Union Congress (TUC) in a communication dated 30 August 2012 which raises new issues related to recent case law, as well as 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 also notes the comments of the ITUC dated 4 August 2011. ***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), section 174 of the Trade Unions and Labour Relations (Consolidation) Act, 1992 (TULRA) was amended. The Government considered that this amendment significantly extended the scope for trade unions to exclude and expel individuals on the grounds of their political party membership.

The Committee also noted the detailed comments made by the TUC setting out certain reservations in respect of the 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 took due note of the detailed observations made by the Government in its previous report in reply to these concerns. The Government stated that it had 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 or her livelihood or suffer other exceptional hardship for loss of union membership. As regards this last point, the Government indicated 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 stated 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 added 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 concluded 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 asked the Government to reply to the further concerns of the TUC. In this regard, the Government indicates that: (1) it was aware of the points raised by the TUC when it introduced its amendments to section 174; and (2) it considers that the provision is consistent with Convention No. 87 and it is satisfied that it does not represent an undue interference in the internal regulation of union affairs. The Committee notes that the Government reiterates the point made in its reports for 2006–08 and 2008–10 that these issues are complex and the law must respect all the competing rights involved. The Committee notes that the TUC reiterates the arguments that it had presented in its previous communication. ***The Committee expects the Government and the TUC 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 indication that: (1) its position remains as set out in its report for 2006–08, that the rationale has not changed and that it therefore has no plans to change the law in this area; and (2) this issue forms part of a matter brought before the ECHR by the National Union of Rail, Maritime and Transport Workers (RMT) and that the Court has yet to consider the case. The Committee recalls the previous concern it raised 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 so as to defend effectively their members' interests should lawful industrial action be too restrictively defined. ***In these circumstances,***

***the Committee once again 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 outcome of these consultations.***

The Committee further recalls 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. It further raised this issue when reviewing the comments made by the British Airline Pilots' Association (BALPA), the International Transport Federation (ITF) and Unite the Union. The Committee notes the Government's indication in its latest report that the TULRA provides a limit on the damages which trade unions can face when inducing workers to take unlawful industrial action. The Government considers that although the European Court of Justice (ECJ) has ruled on the position where EU legislation interacts with EU Member State domestic legislation, and although this has direct effect on the UK, there is no case law as yet to test whether the involvement of EU rights disapplies the limits in TULRA. The Government further indicates that as a result of concerns expressed about the *Viking* and *Laval* case law, the European Commission has published a draft Council Regulation "Monti II" that was being negotiated in the Council and the European Parliament. The Committee notes that the Government was awaiting the outcome of that process. It notes that withdrawal procedures on the proposed Monti II regulation started on 12 September 2012.

***The Committee considers that a full review of the issues at hand with the social partners to determine possible action to address the concerns raised would provide this fundamental right the important attention it deserves at national level and requests the Government to provide information in its next report on the outcome of the discussions.***

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 observations of the Government on the 2010 comments of both the International Trade Union Confederation (ITUC) and the Trades Union Congress (TUC). The Committee takes note of the comments submitted by the ITUC in communications dated 31 July and 4 August 2011, as well as those submitted by the TUC in a communication dated 29 August 2012. ***The Committee requests the Government to provide its observations thereon.***

*Articles 1, 2 and 3 of the Convention. 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 noted 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, and that it has acted to ensure that the MCA surveyors can readily identify clauses which prevent workers from exercising their rights under the Convention, including through training courses and the MCA Operations Advice Note No. OAN 378 which also addresses this issue. The Committee requested the Government to indicate the number of violations identified within the reporting period and to specify the sanctions applied against the persons responsible for such violations. The Committee notes the Government's indication in its latest report that the MCA has advised that, for this reporting period, no such violations have been identified. The Operations Advice Note No. OAN 378 continues to be current. In addition, the MCA advises that, once the Maritime Labour Convention, 2006 (MLC, 2006), comes into force in the United Kingdom, it will be supported by guidance which will specifically address the right to join a union. ***The Committee requests the Government to continue to provide information on any developments in this regard.***

## **Jersey**

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

*Article 3 of the Convention.* The Committee recalls that its previous comments referred to certain provisions of the Employment Relation Law (ERL) and its codes of practice concerning the exercise of the right to strike (right to secondary action and social and economic protests – see section 20(3) of the ERL and Code 2; picketing – Code 2; compulsory arbitration – sections 22 and 24 and Code 3; essential services – Code 2).

The Committee notes that in its report, the Government indicates that: (1) the insular authorities confirm that a review of the provisions of the ERL and its codes of practice continues to be included in the Minister for Social Security's programme of work; (2) the insular authorities regret that the review is still pending and hoped that progress would have been made; (3) the global economic downturn continues to have an impact in Jersey; (4) the delay is regretted; however the review will be undertaken as soon as resources allow it. The insular authorities are grateful for the previous comments of the Committee and confirmed that they will be given due account in the review; and (5) Jersey continues to have a very good industrial relations record; since the Employment (Jersey) Law 2003 came into force on 1 July 2005, there have been no claims to the Employment Tribunal of unfair dismissal or selection for redundancy on grounds of trade union membership.

*In these circumstances, the Committee requests the Government to provide information in its next report on any development concerning the review of the ERL and its codes of practice, as well as on the comments previously made by the workers' organization Unite about the conditions for protected industrial action and the application by the courts of sections 3 and 20(2) of the ERL and Code 3.*

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

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* In its previous comments, the Committee had noted that according to sections 77B and 77C of the Employment (Amendment No. 4) (Jersey) Law, 2009, 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. The Committee requested 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. The Committee notes the Government's indication that, following public consultations in 2008, the Employment Forum, an independent consultation body including representatives of workers, employers and independent members, recommended to the Minister for Social Security that the Employment Tribunal should not have the power to compensate an employee for any financial losses, such as arrears of pay, for the period between the dismissal and the order for re-employment, until such a time as a review of the award-making powers of the Tribunal can be undertaken, which would include a review of how compensatory sums are calculated in other jurisdictions. Moreover, the Minister accepted the concern of the Employment Forum that, given that the equivalent financial compensation is not available to unfairly dismissed employees who are not seeking re-employment, the opportunity to receive additional compensation on these grounds may lead employees to seek re-employment as a matter of course, resulting in a reduced number of pre-hearing settlements. *The Committee invites the Government to pursue dialogue with the social partners in order to ensure that in cases of anti-union dismissals, workers reinstated by the judicial authority will be granted full compensation for loss of pay.*

*Articles 2 and 4. Protection against acts of interference and promotion of collective bargaining.* In its previous comments, the Committee had noted that there were no specific provisions protecting against acts of interference in the Employment (Jersey) Law (EL) or the Employment Relation Law (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 continue to prepare the relevant provision. *The Committee requests the Government to provide information on any development in this regard.*

Moreover, the Committee had requested that Code 1 on the recognition of trade unions be amended in order to guarantee the right to collective bargaining of the most representative organization of the bargaining unit and 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 notes the Government's indication that Code 1 will be reviewed in relation to the Convention as part of the proposed wider review of the ERL and codes of practice. *The Committee requests the Government to provide information on any developments in this regard.*

The Committee notes that the authorities indicate that they regret that provisions to prohibit employer inducement and a review of the ERL and codes of practice are pending and that the global economic downturn continues to have an impact on Jersey; the review will be undertaken as soon as resources allow it. The Committee understands that this review would improve the protection against anti-union interference and collective bargaining rights.

*The Committee expresses its hope, once again, 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**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1954)**

*Article 3 of the Convention. Occupation of the workplace and the right of the management of the enterprise to enter the workplace in the context of a labour dispute.* The Committee notes that, by a communication of 31 August 2012, the International Organisation of Employers (IOE), the Chamber of Industries of Uruguay (CIU) and the National Chamber of Commerce and Services of Uruguay (CNCS) sent comments on the application of the Convention, in which they refer to the recommendations of the Committee on Freedom of Association in Case No. 2699 and state that: (1) contrary to that Committee's findings regarding occupation of the workplace and in flat contradiction of its request, the Government has in practice done nothing and existing standards do not comply with the above principles; (2) the observance in practice of certain principles cannot be secured by mediation and efforts to contain a dispute; (3) it is the Government's duty to protect the freedom of work, as mediation will not protect it; (4) the argument that because there has been recourse to justice the decisions of the supervisory bodies have been implemented does not withstand analysis, and the need to resort to justice in order to protect the rights of employers is a consequence of the Government's failure to

comply either with the law or with the demands of the ILO; (5) article 57 of the National Constitution guarantees the right to strike but requires it to be regulated by law, which is what the employers seek; (6) the complainant organizations in the abovementioned case before the Committee on Freedom of Association endorse the IOE's position regarding the right to strike; (7) occupations of workplaces continue to occur and employers have to turn to the courts in the absence of any protection of their rights by the Government; in view of the Government's deliberate inaction and omission in complying with the supervisory bodies' decisions, the justice system is the employer's only refuge; (8) decision No. 184/12 of the Civil Appeals Court, handed down on 15 August 2012, referring to the occupation of an enterprise, ruled that: (a) section 6 of Decree No. 165/06 – to which objections were raised in the complaint before the Committee on Freedom of Association – on no account affords a means of obtaining the same results as are achieved through proceedings brought under the Constitution (*amparo*), let alone a suitable means or safeguarding the rights in question; (b) human rights recognized in articles 7, 28, 32 and 36 of the Constitution have been breached; (c) de facto situations (such as occupation of the workplace) are an impediment to the enjoyment of freedom, safety, work and property, the availability of personal documents and to freedom in work, agriculture, industry, commerce, occupation and any other lawful activity; (d) in this case, the human rights were violated because the Ministry of Labour and Social Security (MTSS) failed to act on learning of the occupation, and it is not for the MTSS to act as counsel or prosecutor of workers or employers, usurpers or owners, creditors or debtors; it must act spontaneously without having to be asked and without the need for victims or injured parties to demand action; and (9) the Court's decision is accurate in its judgement of the Ministry of Labour's conduct and shows that protection for employers is totally lacking in fact and in law, and the argument that the Government has never refused to comply with a court order carries no weight, is without merit, since failure to obey such an order would indicate an absence of democratic government.

The Committee notes that in its report the Government states that: (1) contrary to the submission of the IOE, the CIU and the CNCS, Uruguay has the lowest conflict rate of recent years according to independent records such as the conflict index compiled by the Labour Relations Programme of the Catholic University of Uruguay; (2) on the protection of freedom to work and the right of employers to enter occupied premises, it should be noted that, although the labour courts do not hear collective labour disputes, the civil courts – by reason of their residual jurisdiction – have authority to hear claims from non-occupying workers who, in general and in accordance with consistent precedent, have seen their claims satisfied once a court order to vacate the workplace takes effect; (3) the fact that non-strikers file claims to the vacation of premises indicates that there are some sound guarantees of the freedom to work, which has been protected through summary proceedings under the *amparo* procedure (the assumption of jurisdiction by the judicial authority entails the subsumption of claims to vacate workplaces by a body that is clearly independent and suited to the settlement of disputes about the law); (4) decisions have been handed down as a result of claims to the vacation of workplaces; (5) in order to safeguard the rights of non-strikers and the rights of employers, the National Labour Directorate, through the Collective Labour Disputes Unit, devotes thousands of working hours every year to collective bargaining in order to prevent and resolve disputes of this kind (it is a specialized body of mediators to which parties can apply voluntarily, seeking intervention by the executive in settling collective disputes; where the procedure has been exhausted and the dispute persists or takes the form of occupation or picketing, the parties may apply to the courts for *amparo* proceedings); (6) the judicial authorities have regularly found in favour of the right to work of non-strikers and the rights of employers, in very brief proceedings (three days in the lower courts), and handed down decisions, and in the event of non-compliance by the occupiers, the executive enforces the vacation order through the services of the Ministry of the Interior (police), and there have been no instances of failure to comply with such an order since this would constitute an offence against the Constitution and the principle of the separation of powers; (7) this demonstrates that the constitutional rights of the employers to which the latter refer are guaranteed by the State; according to the Government, the unstated objective of the employers' complaint is to have the right to strike regulated and to reiterate their assertion that "there is no right to strike in the texts of the ILO international Conventions"; (8) this is the very same argument they submitted at the last session of the International Labour Conference, which prompted the situation that arose in the Conference Committee on the Application of Standards; (9) the Government fully shares the Committee's position that, in light of the scope and significance of the Convention, it is understood that, in accordance with *Articles 3 and 10* of the Convention, industrial action is fully recognized by international standards; (10) the Government reiterates its unqualified respect for human rights, and the employers start off from a wrong premise in that strikes, as a right, are recognized in many international instruments as a human right; (11) the national legislation recognizes the right to strike through the National Constitution (article 57), a fact that the employers appear to overlook in adopting a position that is clearly unconstitutional, and in view of the nature of this right (unquestionably a human right) and its enshrinement in the National Constitution, the State declines to discuss the matter; (12) the employers' theoretical conceptualization is plainly regressive and disregards findings of the Committee on Freedom of Association; what is more, the Committee on Freedom of Association itself acknowledges that the occupation of enterprises or workplaces is a way or form of exercising the right to strike; (13) the advisers of the employers' associations resort to "second-hand" quotations used out of context and their findings about occupation are quite alien to the concept traditionally and customarily adopted by the Committee on Freedom of Association, which regards occupation as a legitimate practice as long as it is peaceful; and (14) the National Constitution protects the right to freedom of work and the right to exercise freedom of enterprise (articles 7, 10, 36 and 53), the right to property (articles 7 and 32), the right to equality before the law (article 8), the right to certainty in law and the right to freedom of movement (article 7).

The Committee notes all this information and recalls that, on analysing the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) by Uruguay, it noted that, in the context of an ILO mission that visited the country in August 2011, a tripartite agreement was concluded between the MTSS and representatives of the workers (Inter-Trade Union Assembly – Workers’ National Convention (PIT–CNT)) and of the employers (the CNCS and the CIU), thanks to which a new phase was opened in the dialogue on comments made by the Committee on Freedom of Association in Case No. 2699, the Committee and the Conference Committee on the Application of Standards. The Committee also notes that, further to this agreement, tripartite meetings are being held on these matters.

The Committee recalls that, in examining Case No. 2699, the Committee on Freedom of Association considered that exercise of the right to strike and the occupation of work premises should respect the right to work of non-strikers, and the right of the management of the enterprise to enter the premises, and asked the Government to secure observance of these principles in legal provisions adopted and in practice.

The Committee also recalls that on numerous occasions it has emphasized that “in so far as the strike remains peaceful, strike pickets and workplace occupations should be allowed. Restrictions on strike pickets and workplace occupations can be accepted only where the action ceases to be peaceful. It is, however, necessary in all cases to guarantee respect for the freedom to work of non-striking workers and the right of the management to enter the premises” (see General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2012, paragraph 149). ***In these circumstances, the Committee expresses the firm hope that, in the context of the tripartite dialogue under way, the necessary measures will be taken to ensure that, taking into account the comments of the Committee on Freedom of Association and this Committee, observance of this principle is fully guaranteed in law and in practice and in consultation with the most representative organizations of workers and employers. The Committee hopes that during the ongoing consultation process, the decisions of the national tribunals will be taken into consideration.***

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

The Committee notes the Government’s reply to the observations dated 4 August 2011 from the International Trade Union Confederation (ITUC), alleging acts of anti-union discrimination and obstacles to collective bargaining. The Committee notes in particular the Government’s statement that: (1) the occasional disputes relating to allegations of obstacles to collective bargaining were settled through collective agreements which strengthened social dialogue and maintained the validity of the agreements on minimum wages which had been concluded in the wages councils; and (2) as regards one of the allegations concerning anti-union discrimination, the administrative authority is already taking action and the file is now with the Legal Division for examination and, as regards the allegations relating to the UPM cellulose plant, the Government indicates that to be able to make any response it needs to know the name of the subcontracting company where the anti-union acts are alleged to have occurred. Finally, the Committee notes the ITUC comments dated 31 July 2012 concerning obstacles to collective bargaining and non-compliance with collective agreements in the health sector. ***The Committee requests the Government to send its observations in this respect.***

The Committee also notes the comments from the International Organisation of Employers (IOE), the Chamber of Industry of Uruguay (CIU) and the National Chamber of Commerce and Services of Uruguay (CNCS), mainly relating to Act No. 18566 of September 2009 concerning collective bargaining. The employers’ organizations recall in particular that the Committee on Freedom of Association asked the Government to take steps, in consultation with the most representative workers’ and employers’ organizations, to amend the aforementioned Act in order to implement the conclusions formulated and ensure full conformity with the principles of collective bargaining and the Conventions ratified by Uruguay in this field. They add that: (1) consultation of the organizations cannot be an obstacle to compliance with international labour standards since this would make it easier for a government to avoid having to take action in response to observations by the supervisory bodies; (2) in reply to draft amendments to the Act proposed by the Government, the employers submitted another draft which expresses the content of the seven points covered by the observations of the supervisory bodies; (3) they observe with concern that the position adopted by a single sector cannot act as a veto on the strict fulfilment of the obligations assumed by the Government as a result of ratifying an international labour Convention, and affirm that the holding of consultations with a view to amending the Act requires achieving a consensus among the parties but can never entail sine die (indefinite) negotiations and, if agreement proves impossible, the Government must comply with the instructions of the ILO; (4) the time that has passed without achieving any progress cannot act as legitimation for violation of a Convention, and negotiations cannot be either fruitless or endless; agreements are signed in order to be fulfilled, and the same applies to the recommendations of the supervisory bodies; (5) the principles of the ILO must be applied immediately and any delay in bringing a law into line with an international Convention owing to the search for consensus cannot be allowed to turn into legitimation with regard to fulfilling them, and any other achievements that a government may cite in the sphere of macroeconomic policy or the exercise of full democracy are worthless if the price to be paid for them is the violation of international Conventions; and (6) the Government has had many possibilities throughout this period for amending the Act so as to bring it into conformity as directed by the supervisory bodies but, at its own discretion and in an arbitrary manner, it has decided not to do so; it is the Government’s responsibility to comply with the instructions of the ILO. The Committee notes the information provided by the Government in reply to these matters.

*Article 4 of the Convention. Collective bargaining.* In its previous comments, the Committee noted the adoption of Act No. 18566 of September 2009 concerning collective bargaining, and the conclusions and recommendations of the Committee on Freedom of Association (CFA) in Case No. 2699, which raised problems of conformity of the abovementioned Act with the Convention (see 356th Report, paragraph 1389). These were referred to in the following conclusions:

- I. With respect to the exchange of information necessary to allow the normal conduct of the process of collective bargaining and the fact 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 (section 4), the CFA noted that, according to the complainant organizations, this provision did not guarantee penalties for any excesses on the part of trade union representatives, and 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 CFA requests the Government to ensure that this principle is respected.
- II. As regards the composition of the Higher Tripartite Council (section 8), the CFA considers account could be taken of an equal number of members for each of the three sectors, and also the appointment of an independent chairperson, preferably nominated jointly by the workers' and employers' organizations, who could break the deadlock in the event of a vote. The CFA 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, particularly the power to consider and decide on questions related to the tripartite and bipartite bargaining levels (section 10(d)), the CFA 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". The CFA 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 (section 12), the CFA 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 the Convention seeks to promote bipartite bargaining to fix conditions of work, the CFA 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 section in question appears to envisage.  
The Committee noted in this connection the Government's statement in its report that the competence of the wages councils was aligned with the provisions of section 83 of Act No. 16002 of 25 November 1988, covering conditions of work, but extended to the latter only when there was agreement between the social partners, which meant 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 Committee understands that these matters have been cleared up between the parties.)
- V. With respect to the subject of bipartite collective bargaining and in particular the fact that, in company collective bargaining where there is no workers' organization, bargaining authorities should pass to the representative higher-level organization (section 14, last sentence), the CFA observes that the complainant employers' organizations consider that the absence of a trade union does not mean the absence of collective relations in the company. The CFA considers, on the one hand, that bargaining with the most representative higher-level trade union organization should only take place if it has a number of members in the company in accordance with the national legislation. The CFA 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 CFA 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 sectoral collective agreement (which is binding once it has been registered and published by the Executive Power (section 16)), the CFA 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.
- VII. As regards the duration of collective agreements and, in particular, the maintenance in force of all the clauses of the agreement which have expired until a new agreement replaces it, unless the parties have agreed otherwise (section 17, second paragraph), the CFA 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. 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 CFA invites the Government to hold discussions with the social partners on amendments to the legislation in order to find a solution acceptable to both parties.

The Committee recalled in its previous observation that, in the framework of the ILO's mission to the country in August 2011, a tripartite agreement was drawn up between the Ministry of Labour and Social Security and representatives of the workers' sector (Inter-Union Assembly of Workers–Workers' National Convention (PIT–CNT)) and the employers' sector (National Chamber of Commerce and Services of Uruguay and Chamber of Industry of Uruguay), thereby setting in motion a new dialogue on the comments made by the Committee on Freedom of Association, the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards.

The Committee notes the Government's statement that: (1) maintaining its practice of respecting the decisions of the supervisory bodies, it has worked tirelessly for more than two years to reach a consensual solution with the occupational sectors in relation to the comments made on various aspects of Act No. 18566; (2) countless formal and informal meetings were held to discuss different conciliation techniques and an ILO mission was received; (3) in view of the fruitless efforts made and the ongoing refusal to find a solution based on social dialogue, the Government considers that it has been patient and proactive enough in this situation, exhausting all the mechanisms at its disposal to reach an agreement; (4) hence, aware of its obligations and responsibilities, it considers the process of prior consultation of the social partners to be concluded and proposes to send a Bill for consideration by the National Parliament to seek a definitive solution to this dispute; and (5) this information and the Bill in question were sent to the social partners in communications dated 8 November 2012. The Committee notes with *interest* the decision to bring a Bill before Parliament relating to the pending issues with a view to overcoming the problems identified and welcomes the indication that the Bill will be submitted to Parliament in November.

*The Committee expresses the hope that the new Act to be adopted will take full account of the aforementioned principles and the comments previously made by the Committee. The Committee requests the Government to provide information in its next report on all further developments in this regard.*

## 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 sections 21(1), 23(1), 31, 35, 36, 48, 49 and 59 of the Labour Code so as to ensure that the legislation makes it clear that, only in the absence of trade unions at the enterprise, the branch or the territory, can the authorization to bargain collectively be conferred on other representative bodies elected by workers. The Committee notes that, in its report, the Government indicates that the responsible Ministry has prepared a draft law to amend the Labour Code with a view to revising several provisions concerning forced labour, foreign enterprises and guarantees provided to certain categories of workers, and to add new provisions concerning employment. The Committee understands that the draft law does not foresee to amend the abovementioned provisions regulating collective bargaining. 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. *It 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, the branch or the territory, can an authorization to bargain collectively be conferred on other representative bodies. The Committee requests the Government to indicate the 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. The Committee notes the Government's indication that collective labour disputes concerning the application of the legislation in force and of existing collective agreements are examined by courts upon request by one of the parties. The Government further indicates that relevant ministries and non-governmental organizations are currently working on a draft law which would regulate collective labour disputes, and that the views of labour law experts and the experience of certain other countries will be taken into account in this process. The Committee recalls that a distinction has to be made between rights disputes, which concern the application or the interpretation of a collective agreement (the settlement of such disputes may be referred to an independent authority), and interest disputes, which relate to the establishment of a collective agreement or to the modification, through collective bargaining, of wages and other conditions of work contained in an existing collective agreement. With regard to the latter type of disputes, the Committee recalls that compulsory arbitration, including through the judicial procedure, in the case that the parties have not reached agreement, is generally contrary to the principles of collective bargaining. In the Committee's opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants exercising authority in the name of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute national crisis. However, arbitration accepted by both parties (voluntary) is always

legitimate. In all cases, the Committee considers that, before imposing arbitration, it is highly advisable that the parties be given every opportunity to bargain collectively, during a sufficient period, with the help of independent mediation. *The Committee hopes that the legislation regulating the settlement of collective labour disputes and, in particular, interest disputes, will soon be adopted and that it will reflect the principles above. It requests the Government to provide information on all progress achieved in this respect, including a copy of the draft law or the text of the legislation, if adopted before the next reporting cycle. The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

*Articles 5 and 6. Collective bargaining in the public sector.* 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 the Government's indication that, according to the Federation of Trade Unions of Uzbekistan, sectoral collective agreements cover over 30 ministries and government bodies. Trade unions can be established and collective agreements concluded with regard to employees of both chambers of Parliament, the Cabinet of Ministers and local bodies of executive power. The Government further indicates that the list of categories of public servants who do not enjoy the right to establish trade unions and bargain collectively includes certified personnel of the Ministry of Defence, the Ministry of Internal Affairs, Ministry of Emergency Situations, Service of National Safety and Security, State Customs Committee and State Committee on Protection of State Borders. The Committee takes note of this information.

## **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 31 July 2012, the Confederation of Workers of Venezuela (CTV), of 29 August 2011 and 31 August 2012, and of the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), of 28 August and 12 September 2011, and of FEDECAMARAS and the International Organisation of Employers (IOE) dated 30 and 31 August 2012. The Committee also notes the comments of the Independent Trade Union Alliance (ASI), dated 14 August 2012. The Committee further notes the conclusions of the Committee on Freedom of Association on the cases presented by national and international organizations of workers (Cases Nos 2763 and 2827) and of employers (Case No. 2254), and observes that three more cases are under examination (Cases Nos 2917, 2955 and 2968). The Committee observes that the Committee on Freedom of Association included Case No. 2254 in the category of serious and urgent cases which it especially draws to the attention of the Governing Body of the ILO. The Committee notes the discussion held in the Committee on the Application of Standards of the International Labour Conference in June 2010 on the application of the Convention in the Bolivarian Republic of Venezuela. The Committee observes that the Conference Committee requested the Government to accept high-level technical assistance from the International Labour Standards Department. The Committee notes that the Government accepted a "tripartite" high-level mission which would examine all the matters pending before the Governing Body in relation to Case No. 2254, as well as all matters relating to technical cooperation. In its previous observation, the Committee requested the Government to provide its observations on the communication of the Single National Union of Public Employees of the Venezuelan Corporation of Guyana (SUNEP-CVG) and the ASI dated 10 November 2009. The Committee notes the Government's reply to the most recent communications of the ITUC, ASI and FEDECAMARAS. In its reply, the Government points out that certain of the matters raised, as well as those raised by FEDECAMARAS and the IOE, have been submitted to the Committee on Freedom of Association and it refers to the replies that it sent to that Committee.

#### ***Trade union rights and civil liberties***

The Committee recalls that in its previous observation it examined issues related to the murder of trade union leaders and members in the construction and petroleum sectors since 2007. According to the CTV, these murders amounted to hundreds of workers and trade union leaders in the construction sector. The ASI put the figure of 29 murders during the recent period. The Government referred to the murder of 13 trade union members and two workers and provided information on the proceedings and detention of the presumed culprits. The Committee requested the Government to provide information on the outcome of the labour round-table meeting and of the special commission which had been established.

At the request of the Government, the Committee invited the ITUC and the ASI to provide further details on the cases of murders of trade unionists to which they referred (names, trade union functions, date of the murder, criminal complaints made, etc.); the organizations have not provided this information. In its communication of 14 August 2012, the ASI alleges that an independent NGO places the figure for anti-union murders as a result of violence and hired killers at over 200 workers (trade union leaders and members). According to the ASI, the names are "at hand; it is only necessary to ask the workers and the victims' families". It adds that in light of these proven crimes, the authorities have adopted mediatic measures without follow-up (such as a tripartite labour round-table meeting in 2009, which met on six occasions, and round-table meetings in the States with the highest incidence of criminality). In July 2010, the Office of the



Prosecutor General appointed a national prosecutor with responsibility for all murders related to the trade union movement, but up to now the country has not been informed of the results of these investigations.

The Committee notes the Government's statements in reply to the request for information on the outcome of the labour round-table meeting on anti-union violence in the construction sector and the Special Commission with the Ministry of Internal Relations and Justice, with a view to following-up cases of violence. The Government indicates that the labour meeting on anti-union violence in the construction sector and the Special Commission to follow-up cases of labour violence, chaired by the People's Ministry for Internal Relations and Justice engaged in an intense day's work in the month of November 2011, and reached the following conclusions:

- Identification of the factors which influenced violence in the construction sector, on which the following conclusions were agreed:
  - (a) in view of the encouragement to build housing and the plans for infrastructure development, the number of men and women workers in the construction sector is above 1,200,000, representing almost 10 per cent of the economically active population in the country;
  - (b) the income of men and women workers in the construction sector has increased significantly as a result of the collective agreements concluded in recent years, which have been extended to apply to all men and women workers in construction, even where the work commences after the collective agreement has been concluded;
  - (c) due to the important mass of workers, their purchasing power and the number of worksites throughout the country, the sector has been liable to criminal activity by certain groups, and
  - (d) the facility of access to the worksites has allowed the presence of persons who are not connected with the work and who circulate among the men and women workers. These persons, when they are approached by the guards of the construction companies, identify themselves as trade unionists, even though they do not belong to any of the trade union structures.
- Investigations into the deaths as a result of criminal action in the construction sector:
  - (a) in most cases of murders attributed to anti-union violence, it was not possible to establish an employment relationship with any enterprise in the construction sector, nor were they identified as belonging to any trade union structures active in the sector;
  - (b) when consulted, the family members indicate that the victim was a "trade union member in the construction sector". It was possible to confirm, through witnesses, that these individuals in practice were in construction worksites, but did not engage in any trade union activities;
  - (c) less than 5 per cent of the cases of deaths denounced as being due to anti-union violence relate to members of any trade union organization, or are the result of action by trade unions, for which reason the term "trade union violence" is not correct;
  - (d) in cases in which it was found that the victim was indeed a construction worker or a trade union leader, it was found that the act of violence was not related in any way to trade union activities; and
  - (e) it was found that in certain cases trade unions were registered which served as a screen for activities by groups unrelated to trade unions.
- Based on the conclusions, agreement was reached on the following points: (a) the need to supervise and monitor entry to construction works to prevent access by unidentified individuals; (b) trade unions need to provide cards for all the members of the union; (c) trade union delegates should be elected from workers engaged in the work so that their presence is guaranteed; (d) trade unions should indicate the members of the union who are authorized to cover a particular worksite so as to ensure security of access; (e) the access of arms to construction sites should be prevented and patrols established on such sites; (f) it should be verified whether those promoting trade unions for the construction industry work in any construction enterprises; (g) information in the press identifying the victims of fatal crimes as trade unionists in the construction sector should be denied when they do not belong to a union; and (h) a follow-up commission should be created for cases of violence in the construction sector. The follow-up commission will meet on the first Monday of each month and will be composed of: (1) a representative of the People's Ministry for Internal Relations and Justice; (2) a representative of the Office of the Attorney-General; (3) a representative of the People's Ministry for Labour and Social Security; (4) a representative of the Office of the Ombudsman; (5) a representative of the Bolivarian National Guard; (6) a representative of the Bolivarian Intelligence Service; (7) a representative of each of the trade union federations (FUNBCAC and FENATC); and (8) a representative of the Bolivarian Chamber of Construction.

With regard to the information requested by the Committee on all cases of violence against trade union leaders and members in the country, investigations and criminal proceedings against those responsible, detention orders and the sentences imposed, the Government indicates that there are no cases of anti-union violence. The cases which have been referred to the ILO relate to victims of criminal acts resulting from common delinquency, and the appropriate measures were taken. The Government adds that in cases in which the ILO has knowledge of anti-union violence in the country, it is requested to provide the following data so that appropriate measures can be taken: the identification of the alleged victim

of anti-union violence; the trade union of which the victim was a member; and the allegations on the basis of which it is identified as a case of anti-union violence.

The Committee notes the information provided by the Government on the conclusions of a high-level tripartite labour meeting held in 2011 in the construction sector and the establishment of a follow-up commission. Although it notes that, according to the Government, fewer than 5 per cent of the victims were members of trade unions, and that in such cases it was found by the labour meeting that the act of violence was not related to trade union activity, the Committee observes that, in response to its request for the establishment of a national tripartite committee on situations of violence against trade unionists, the Government indicates that commissions exist in the Bolivarian Republic of Venezuela for all issues on which it is necessary to hold discussions with workers, and that a commission already exists to review situations of violence in the construction sector, which concluded that these situations were not cases of trade union violence. The Government raises the question of which proven cases of violence and violation of fundamental rights would merit a tripartite commission. The Government demands a firm enumeration with specific data on the cases so that it can provide the respective answers.

***Observing that the Government focuses its reply basically on 2011 information concerning the labour round-table meeting of 2011, and taking into account the gravity of the situation and the allegations by the trade union confederations that the murders of many trade union leaders and members were related to trade union activities, the Committee once again requests the Government to provide information on all cases of anti-union violence in the country, on the investigations and criminal proceedings against those responsible, the detention orders issued and the sentences imposed. It requests the trade union organizations to provide, and to forward to the Government, the names of the trade unionists who were murdered and as many details as possible on the circumstances of their deaths, including any evidence of their anti-union nature. As the violence affecting trade unionists occurs in various States, the Committee requests the Government to establish a national tripartite committee on situations of violence and to provide information on the findings of the investigations carried out by the national prosecutor appointed, according to the ASI, to investigate all cases of violence against trade union leaders and members. The Committee also requests the Government to provide information on the acts of violence against trade unionists denounced in the communication of the CTV dated 31 August 2012.***

With reference to the acts of violence against the headquarters of FEDECAMARAS in February 2008 and the abduction and attack with firearms of four leaders of FEDECAMARAS on 27 October 2010 (Albis Muñoz, Noel Álvarez, Luis Villegas and Ernesto Villasmil), which resulted in the injuries from several bullets to the leader Albis Muñoz, the Committee recalls the Government's indication that the judicial authorities had detained two persons charged with the violence against the headquarters of FEDECAMARAS in 2008, and that the two presumed perpetrators and three other persons had been identified (members of a criminal gang engaged in kidnapping). The Committee notes the Government's indication in its report that the cases concerning the four leaders of FEDECAMARAS, including Ms Albis Muñoz, and the attack against the headquarters of FEDECAMARAS, have not been concluded. ***The Committee requests the Government to provide information on the progress made in the criminal proceedings and firmly hopes that those responsible for these crimes will be punished severely in the near future.*** The Committee notes with **concern** the allegations of FEDECAMARAS concerning threats, detention and harassment of employer leaders, for example by numerous state inspection bodies, and the restrictions on the freedom of expression of employers and on independent media, and the raids on private property.

### **Legislative matters**

***Provision of lists of trade union members to the Ministry of Labour.*** With reference to the Committee's conclusion that the legal obligation for trade unions to provide the list of their members to the Ministry of Labour must be accompanied by sufficient guarantees of confidentiality, the Government indicates that in the Bolivarian Republic of Venezuela the dues paid by trade union members are deducted from wages directly by the enterprise, in a requirement that has been established by law since 1936. The lists of members that have to be provided by trade unions to the People's Ministry of Labour and Social Security are based on the lists provided by enterprises for the deduction of union dues. Trade unions are therefore informed by employers, both public and private, who their dues-paying members are, and it is of no interest to employers to be informed by the People's Ministry of Labour and Social Security of the names of trade union members, when this information is already contained in their records. The Government adds that the information provided to the People's Ministry of Labour and Social Security concerning the names of members once a year is for statistical purposes and is used to review trade union representativeness, generally for the purposes of collective bargaining when it is challenged by another union. It is a requirement that has never been challenged by trade unions, and no cases are known in which the confidentiality of the data has been at issue. When the legislation was amended by a tripartite committee in 1997, which benefited from ILO advice, this provision was not amended in any way. Since 2001 and up to the present, the Government adds that when compulsory membership of unions was prohibited and the union map of the Bolivarian Republic of Venezuela was transformed, with the emergence of over 80 per cent of the trade unions that are currently active, certain trade unions refused to comply with the requirement because the number of their members had fallen considerably, and even below the minimum number required for them to operate. Nevertheless, all the existing data that have been provided by unions on their members since 1936 are kept in the strictest confidentiality, and this information has never been used for purposes of discrimination or prejudice against trade unions or their members.

The Committee observes that the ITUC and other trade unions criticize the requirement to provide the authorities with a list of trade union members. The Committee considers that, except in cases where the members decide voluntarily to provide their data for the purposes of the deduction of their trade union dues, the trade union membership of workers should not be communicated to either the employer or the authorities. The Committee observes that the new Basic Labour Act maintains the lack of confidentiality of membership, and it addresses this issue below.

### *National Electoral Council*

The Committee has criticized the role of the National Electoral Council (CNE) (which is not a judicial body) in relation to trade union elections, and in its previous observation requested the Government to take measures to ensure that the standards in force provide that appeals relating to trade union elections are determined by the judicial authorities, and do not require, as requested by one of the trade union organizations which has made comments, the publication in the *Gaceta Electoral* of the results of trade union elections as a requirement for their recognition, nor the provision of the election schedule to the CNE. The Committee also recalls that trade union organizations were required to amend their statutes when the new Constitution of the Republic was adopted so as to recognize the intervention of the CNE in their elections. The Committee requested the Government to indicate whether the trade unions which at that time had to change their statutes to accept the participation of the CNE in the holding of their elections are required to submit to the CNE.

In this respect, the Government states that the democratic election of trade union officers is a constitutional right of the members of all trade unions. The only requirement upon trade unions is to hold their elections in accordance with their statutes, which have to guarantee that the process for the election of the executive board of the organization is held by direct, universal and secret ballot of the members, although this basic requirement of trade union democracy was not respected for over 40 years. Based on an agreement for the defence of democracy, known as the *Pacto de Punto Fijo*, signed in 1959 by the political parties, under the heading of combating communism, measures were established to “safeguard democracy”, which in practice meant that all trade union elections were suspended. The members of the executive boards of trade unions were selected in agreement with the political parties and, with a view to legitimizing them, it was announced that elections had been held and that a single list had been presented. The Government adds that, during the process of drawing up the Constitution of the Bolivarian Republic of Venezuela, all the workers’ assemblies agreed that the Constitution should establish the requirement to hold trade union elections and that the electoral authority, which is one of the five authorities (together with the executive authority, the legislative authority, the judicial authority and the moral authority, which make up the Venezuelan State), should supervise and guarantee the democratic rights of the members of trade unions. The Government adds that the CNE, a body of the electoral authority, entrusted with ensuring the democratic right of all Venezuelans to elect and to be elected, is entrusted with the functions of ensuring compliance with democratic guarantees in electoral processes. These rights include: (1) the publicity given to elections, as all members are entitled to be aware of the holding of an election in their union, for which reason the convocation of the election has to be posted on trade union notice boards, in workplaces and published in the *Gaceta Electoral*, which is a weekly publication announcing all elections in the country; accordingly, trade unions have to notify the convocation of an election so that it can be published in the *Gaceta Electoral* as a guarantee that publicity is given to elections; (2) clear rules for the electoral process; all statutes have to indicate the procedures that make up the election process: of the unions registered prior to 1999, 96 per cent did not establish their electoral process in their statutes; there is no requirement to submit the electoral rules to the CNE, but the statutes have to contain clear rules on the holding of elections; (3) the electoral process has to be planned, organized and directed by the trade union electoral commission, which is an internal body of the union; the CNE can only participate at the request of the parties, or of the trade union electoral commission, where elements exist which may affect the proper conduct of the electoral process; (4) appeals against actions, acts or omissions which affect the rights of members have to receive a rapid and direct response; all challenges have to be lodged with the trade union electoral commission, which is required to respond within three days; only where there is no response, or the challengers are not satisfied with the response, can they have recourse to the CNE, which is the administrative body of the electoral authority, which is the only authority constitutionally empowered to decide electoral disputes; when the administrative channels have been exhausted, challenges can be referred to the judicial courts that are competent for electoral matters, and any appeal through the courts for the protection of constitutional rights and guarantees has to have exhausted the available administrative channels; and (5) it is the responsibility of the trade union electoral commission to proclaim the election of the executive board and to notify the CNE so that the results of the election can be published in the *Gaceta Electoral*, so as to guarantee that those concerned can make any necessary appeals; publication in the *Gaceta Electoral* occurs within 15 days of notification of the information.

The Government indicates that this explanation has been given to the ILO and that it is prepared to continue providing explanations carefully to clarify the lack of knowledge of the rights and guarantees set forth in the Constitution of the Republic for all Venezuelan citizens, including the members of trade union organizations. Nevertheless, the reiteration of the request leads the Government to wonder whether in reality there is a lack of knowledge by the ILO concerning the organization of the Venezuela State, as set out in a Constitution approved by popular referendum, which establishes a division between five authorities that are totally independent of each other: the executive, legislative, electoral, judicial and moral authorities, each with specific areas of competence, and that the authority competent in electoral matters, as its name indicates, is the electoral authority. Moreover, if the members of the electoral authority and those of the judicial authority are appointed in the same manner and enjoy the same independence in their functions, why

does the ILO wish to transfer the competence that the Constitution has entrusted to one of the authorities to another, which does not have such competence? When the ILO calls for the convocation of elections not to be published in the *Gaceta Electoral*, does it want citizens not to be informed of the existence of an election in a trade union and to return to the period when trade union elections were conducted without the knowledge of their members? When it is indicated that an attempt is being made to impose electoral rules on a trade union, has a prior verification been carried out whether the statutes or rules of the complainant trade union set out its own electoral rules? May the legislation not require a trade union to set out in its statutes the rules governing the electoral process as a guarantee of the democratic rights of its members without any interference by the electoral body in the formulation of its rules? Does the ILO not want the results of elections to be notified to members so that they can make any necessary appeals?

***The Committee wishes to reiterate that trade unions elections are an internal matter for trade unions in which the authorities should not interfere and that trade unions have reported cases of interference by the CNE, which have been confirmed by the Committee on Freedom of Association. The Committee of Experts observes that the ITUC and other trade unions continue to criticize the role of the CNE in trade union affairs. The Committee reiterates its previous conclusions and examines below the provisions of the new Basic Labour Act respecting trade union elections.***

Finally, the Committee notes the ITUC's allegation that the CNE adopted a decision to invalidate and set aside legitimate bodies of the CTV by declaring invalid the V Congress of the CTV, held in March 2011.

The Government indicates in general terms that there is no intervention in trade union elections and that there is no type of interference. ***While recalling that it has always rejected the role of the CNE in trade union elections, the Committee requests the Government to indicate the specific reasons why the CNE declared the CTV Congress invalid, as alleged by the ITUC, as the Government's comments are confined to indicating in general terms that the CNE does not intervene in trade union elections and to reproducing the text of the legal provisions respecting trade union elections.***

#### **Other legislative issues**

The Committee notes the Government's indications concerning the enactment of the Basic Act on labour and male and female workers (LOTTT) of April 2012. The Committee welcomes the fact that the new Act takes into account a number of the observations made during the technical assistance provided by the ILO and as requested by the Committee. For example, foreign nationals are no longer required to be resident for ten years to hold trade union office, the functions of the CNE are limited in relation to the previous situation, and the number of workers required to establish a union is reduced.

However, the Committee notes that the minimum number of employers (ten) required to establish an employers' organization (section 380) has not been reduced, the enumeration of the objectives of trade unions and employers' organizations continues to be too extensive (sections 367 and 368), including for example the objectives according to which employers' organizations need to guarantee the production and distribution of goods and services at the correct price in accordance with the law, undertaking studies on the characteristics of the respective industrial branch, providing reports as requested by the authorities in conformity with the law, conducting campaigns to combat corruption actively, etc.

The Committee observes that the new Act provides, as indicated above, that the logistical support of the CNE for the organization of elections is only provided at the request of the trade union executive boards. Nevertheless, the Committee notes that the CNE (which is not a judicial body) continues to be competent to examine any complaints which may be made by members. Furthermore, in breach of the principle of trade union independence, the text of the Act also maintains the principle that delays in the electoral process (including when complaints are lodged with the CNE) prevent the trade unions concerned from engaging in collective bargaining. The Act also imposes a system of ballots which includes the election of the executive board by single vote and proportional representation (section 403), while the Act continues to require trade unions to provide to the authorities the complete list of their members, and to supply the competent officials with the information that they request on their statutory obligations (section 388). The Act also interferes in numerous matters that should be regulated by union statutes, for example, by indicating that the purpose of collective bargaining is to achieve the objectives of the State (section 43), the eligibility of trade union leaders is subject to them having called trade union elections within the time limits when they were leaders of other organizations (387), and a referendum is required to be held to revoke those holding trade union office (section 410).

The Committee further notes that, in the event of a strike, it is the competence of the People's Minister responsible for Labour (and not the judicial authorities or an independent body, particularly in the case of strikes in public enterprises or institutions) to determine the areas or activities which cannot be paralyzed during the strike on the grounds that they would affect the production of goods or essential services, the stoppage of which would harm the population (section 484). The Committee notes the Government's statement that referring this to the judicial authorities would delay the right to strike. The Committee emphasizes that in the public sector the administrative authorities are an interested party in relation to the determination of minimum services. Furthermore, the system for the appointment of the members of arbitration boards in the event of strikes in essential services does not guarantee the confidence of the parties in the system since, where agreement is not reached by the parties, they are appointed by the labour inspector (section 494). The Act also recognizes workers' councils, although their functions are not determined clearly, even though it is provided in the Act

that they may not encroach upon the functions of trade unions. *The Committee requests the Government to provide additional information on this subject.*

The Committee also recalls that, with regard to the right to strike and other trade union rights, it referred previously to certain legislation which, according to the trade union organizations, criminalized the right to demonstrate and to strike and hindered trade union rights in practice: sections 357 and 360 of the Penal Code respecting conduct jeopardizing security in means of transport and the media, sections 358 and 359 of the Penal Code (obstacles and damage to public thoroughfares and means of transport), and the Basic Act on national security and defence, the Act to defend the access of individuals to goods and services, the Special Act on the defence of the people against hoarding, speculation and boycotts and any conduct affecting the consumption of food or products subject to price controls. The trade unions also alleged the very broad use for anti-union purposes of cautionary and judicial measures, such as the regular requirement to appear before the judicial authorities. The Committee notes the Government's indications that there are no ambiguous legal provisions limiting the right to strike and its emphasis that the right to strike is a constitutional right, protected by the Act respecting the protection of constitutional rights and safeguards which cannot be reduced by any laws or regulations. The Government asks whether the ILO knows of any ambiguous penal provision which has limited the right to strike of a trade union. If that is the case, the Government asks for indications to be provided concerning the legal provision and those whose right to strike was limited by such a provision. The Government states that the right to demonstrate and freedom of expression are guaranteed by the Constitution of the Bolivarian Republic of Venezuela and that there is not one single case of persons taken to court or required to appear before the civil authorities for having participated in a peaceful demonstration or expressed any opinion. The Government calls on the ILO to indicate precisely the cases of which it has knowledge of persons who have been referred to the authorities for having participated in a peaceful demonstration or for expressing any opinion. With regard to the provisions of the Venezuela Penal Code, and specifically sections 357, 358 and 360, the Government indicates that it is important to note that these provisions relate to illicit and unlawful conduct undermining security in 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. The Government therefore adds that in no event do these provisions refer to the imposition of penalties or sanctions for peaceful demonstrations or acts, but on the contrary they cover cases of illicit or illegal conduct. The types of conduct classified by these provisions as illicit are also considered to be crimes in the penal legislation of many countries throughout the world, with penalties and sanctions being established for those who commit crimes against means of transport and communication, for example in the Penal Codes of Spain, Germany, France, Mexico, Peru, Panama, Uruguay, Bolivia and many other countries. Accordingly, by establishing these crimes in the Penal Code, far from limiting the right to strike or to peaceful demonstration, the Bolivarian Republic of Venezuela is protecting public security and the safeguards enjoyed by its citizens. With reference to the Basic Act on national security and defence which, according to the CTV, is in violation of the right to strike, the Government cannot conceive how the concept of the State safeguarding the security and defence of the nation and the population can be in violation of the right to strike. It adds that the security of the nation is based on comprehensive development and is the pre-condition which guarantees the enjoyment and exercise by the population, the institutions and each of the individuals who are members of the State and of society of their rights and guarantees in the economic, social, political, cultural, geographical, environmental and military fields. The Government further notes that the Basic Act on national security and defence is to be considered as a series of elements considered to be essential in the structure of the Nation, as they offer confidence and protection to all the persons within its territory. In any State, and particularly in the Venezuelan State, the Government observes that there are a series of elements, both natural and territorial, which have to be preserved and protected from entities which have no place managing or using them. The purpose of the Act is to regulate the activities of the State and of society in relation to overall security and defence in accordance with the policies, principles and objectives set out in the Constitution, also taking into account that the scope of comprehensive security and defence is circumscribed by the provisions of the Constitution and the laws of the Republic, and in international treaties, agreements and conventions, which have not been set aside, and have been concluded and ratified by the Republic, in those areas in which vital national interests lie.

*The Committee requests the Government to refer the issues raised to tripartite dialogue.*

### **Social dialogue**

*National Tripartite Commission on Minimum Wages.* The Committee regretted to note in its previous observation that the National Tripartite Commission on Minimum Wages envisaged in the (previous) Basic Labour Act had not been established.

The Committee notes the Government's indications that the fixing of the minimum wage annually is a constitutional obligation of the State, since the adoption of the Constitution of the Bolivarian Republic of Venezuela in 1999, with which it has been complying rigorously since 2000, after holding consultations with all the social organizations and socio-economic institutions. It adds that the consultations do not prevent trade union representatives from meeting to give their views jointly, although the existence of differing opinions is not an obstacle which prevents compliance with the requirement for the State to fix the minimum wage each year. The stage has been passed of the negotiation of rights, in which the fixing of the minimum wage was regulated in exchange for the granting of other claims demanded by the workers. During the last decade of the past century, the National Tripartite Commission, from which workers and employers were excluded, was not capable for over five years of reaching agreement on adjustments to the minimum

wage, and froze it during the period of the highest inflation experienced by the country. For this reason, the workers and their trade unions called for the fixing of the minimum wage to be an annual requirement placed on the State. The Government deplores the fact that the ILO does not understand this important victory for men and women workers and is calling for retrograde steps.

The Committee *regrets* to note that the National Tripartite Commission on Minimum Wages has disappeared from the new LOTTT of 2012. The Committee emphasizes that it is clear that the Government is entitled to engage in consultations, not only with the most representative workers' and employers' organizations, but also with any social organizations and socio-economic institutions that it wishes. Nevertheless, the Committee emphasizes that, whatever the Government's assessment of tripartite experiences in the past, in view of their representativeness, experience and knowledge of labour matters, consultations with the most representative workers' and employers' organizations should give rise to dialogue and special consideration. However, FEDECAMARAS and at least two trade union confederations report the lack of consultation and social dialogue (the IOE emphasizes that a representative of FEDEINDUSTRIA, a minority organization close to the Government, was appointed to the commission entrusted with drawing up the draft LOTTT), and that the Higher Labour Council (entrusted with supervising the implementation of the LOTTT) is clearly composed of persons close to the official line. According to the employers' organizations, the LOTTT is punitive and discriminatory against employers, and envisages functions and penal sanctions, as well as widespread state intervention in industrial relations. The Act continues to give effect to government policies which have resulted in a 33.5 per cent decrease in the number of private employers and which have the objective of promoting the Bolivarian socialist model, which places enormous limits on economic freedom. The IOE and FEDECAMARAS emphasize that independent employers' organizations find themselves in a situation in which their survival is at great risk.

*Other forums for consultation.* In its previous observation, the Committee reached the following conclusions:

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 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. ... 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 the ITUC's allegation that the Government disregards the representativity of trade unions which are not close to the Government. It indicates, for example, that with a view to drawing up the LOTTT, a special commission was appointed composed of 16 persons following the official line, and that the three trade unionists who were members belonged to the recently created Bolivarian and Socialist Confederation of Workers, selected by the President. The CTV and the ACI report serious shortcomings in social dialogue.

The IOE and FEDECAMARAS emphasize the total lack of consultation and social dialogue in drawing up the LOTTT. They recall that, under the protection of an Act adopted by the Legislative Assembly which empowered the President of the Republic to adopt legislation between January 2011 and May 2012 through legislative decrees, another 16 presidential legislative decrees were adopted on subjects directly affecting the interests of employers, without any consultation with FEDECAMARAS. According to these organizations, the only consultation held was in relation to minimum wages, through a letter, giving a 15-day deadline for replies, without any real social dialogue or discussion.

With reference to the adoption of the LOTT, the Government indicates that the citizen President, by means of Decree No. 8661, published in *Gaceta Oficial* No. 39818 of 12 December 2011, established a commission for the creation and formulation of the new Basic Labour Act, with a view to adapting, balancing and redefining the essential characteristics of industrial relations within the jurisdiction of the Bolivarian Republic of Venezuela to the conditions of a social State based on law and justice, in which workers are in a situation of equilibrium in relation to employers. On 1 May, the modern and revolutionary LOTT was adopted. A commission participated in drawing up the LOTT composed of representatives of all sectors: workers, people from rural areas, employers, the Government, the judicial and legislative authorities. The commission had the sole objective of drawing up draft legislation which took into account the feelings of the people and expressed collective interests in compliance with the intangible and progressive rights of workers set out in the Constitution. Over ten years of meetings held by the National Assembly with various sectors were synthesized and, during the last six months prior to the approval of the Act, over 19,000 proposals were forwarded directly to the commission, which were examined and discussed publicly. The Labour Act had its origins in a constructive national debate. The new Act shows that only social dialogue is able to develop the laws and industrial relations urgently required by our countries, in full respect for human rights. Direct dialogue with workers and their employers led to an Act which was welcomed by everyone even before its adoption, and which has been key to the sustained economic growth experienced by the country, with an unemployment rate below 8 per cent, which totally disproves those who foretold the closure of enterprises and unemployment, and demonstrates that guaranteeing and protecting labour rights is a basic condition for the economic stability of the country. The Government adds that the Bolivarian Republic of Venezuela is an example of the consolidation of labour laws, the protection of freedom of association, collective bargaining, the right to strike and other rights.

According to the Government, there is a marked difference, not only with the repealed Act imposed by a closed and exclusive form of tripartism in 1997, but also with economic models at the global level which are today giving rise to structural crises with a substantial regression in the rights won by the working classes. The Bolivarian Republic of Venezuela offers the example that social dialogue has to be held directly with the social actors, thereby avoiding blackmail by sordid group interests, that collective interests have to be above manipulation by groups, and that the objective has to be to uphold the progressive rights of workers, since labour is a fundamental process in the achievement of a peace-loving society. Those who excluded themselves from the political debate remained on the margins, the actors of an old form of tripartism who claim a representativity that they no longer have and a role as spokespersons which no longer belongs to them.

The Committee notes the Government's statement that there are very clear and predetermined criteria concerning the representativity of trade union organizations, consisting of determining which organizations have the largest number of members and the greatest trade union activities. There are six trade union confederations of men and women workers and five confederations of men and women employers, and there have always been clear criteria (however, the Government indicates that the trade union confederations are not complying with the legal requirement to provide the names of their members with a view to demonstrating their representativity in numerical terms). The Government nevertheless notes that, in the case of employers, the IOE has wished to impose a criterion of representativity based on only organizations affiliated to it being considered "representative", which constitutes an act of anti-union discrimination prohibited by the national legislation. The Government adds that all the decisions of the national Government and the National Assembly are submitted to the broadest consultation with all the social organizations, and in most cases teams are established for the formulation of draft legislation which include all the social actors. A commission participated in drawing up the draft LOTT which was composed of representatives of all sectors (workers, people from rural areas, employers and the judicial and legislative authorities). There was direct dialogue with workers and their employers. However, there were organizations which excluded themselves from the consultations because they indicated that only they should be consulted, and the other social organizations excluded. The Government asks whether the ILO has information of any case or any draft legislation on which widespread consultation was not held in accordance with the requirements set out in the Constitution, and it is only aware of a complaint by a single organization which has repeatedly refused through its own will to participate in consultations.

The Committee notes that the Government has not provided a schedule of the meetings held in relation to draft legislation, including the LOTT, between the authorities and FEDECAMARAS, or between the authorities and the trade union confederations CTV and ASI. The Committee concludes that (as indicated by the ITUC) only one trade union confederation participated in the commission entrusted with drawing up the new Basic Labour Act, and that FEDECAMARAS was not invited to be part of that commission. The Committee once again notes grave shortcomings in relation to social dialogue and therefore reiterates its previous conclusions and recommendations (which are not repeated here, as they were reproduced above).

The Committee notes the Government's statement that: (1) the allegations of the IOE and FEDECAMARAS concerning the adoption by presidential legislative decrees, under an Act empowering the President to legislate, of 16 legislative decrees which seriously affect the interests of employers without consultations with FEDECAMARAS have been submitted to the Committee on Freedom of Association; and (2) that the Government has provided its reply to the Committee on Freedom of Association.

### *Parallel organizations*

With regard to the Committee's requests for the necessary measures to be taken to conduct an investigation into the allegations of the promotion by the authorities of parallel workers' and employers' organizations which are close to the Government, and of favouritism and partiality in relation to such organizations, the Government states that any legal or paralegal machinery which existed that violated the right of men and women workers to establish their own trade union organizations were eliminated with the adoption of the Constitution of the Bolivarian Republic of Venezuela in 1999. These mechanisms used to be: compulsory membership of official unions throughout the public sector and in the majority of private enterprises; the requirement to be a member of a specific trade union to have access to employment; the requirement for the registration of a trade union for the application to be accompanied by the authorization of the trade union federation or of specific political parties; the prohibition of trade union membership by administrative employees in private enterprises; and the provision of State buildings and resources to trade unions close to the Government. The Government adds that, as a result of the elimination of these restrictions on freedom of association, trade union activity blossomed as from 2000, with the establishment over the past 12 years of 35 per cent of all the trade unions that have been registered throughout history since 1936. Trade unions have acquired political, administrative and operational autonomy, as well as economic independence in relation to the State. The transformation of the union map has been so radical that over 80 per cent of the trade unions existing prior to 1999 disappeared and, of those that remain, most of them have lost over 50 per cent of their members. There are first-level unions which have more members than the whole membership of the four trade union confederations which existed prior to 1999.

The Government raises the question of the reasons for this situation. It also wonders whether these organizations lost the support of the Government as a result of their operation and the elimination of discriminatory provisions requiring workers to be members of trade unions that they did not want to. However, certain organizations find no other explanation of why they have been abandoned by their members than to believe that, as happened previously, the Government is promoting other trade union organizations, without seeing that it has been the protection of freedom of association, freedom of membership and the freedom to establish trade unions which has affected them. Regrettably, according to the Government, it would appear that the ILO is letting itself be used for political games that are far from reality. The Government calls for indications to be provided of any specific cases of trade unions promoted by the State and which do not owe their operation to their voluntary acceptance by men and women workers.

The Committee observes that the Government once again denies the allegations of favouritism towards certain workers' and employers' organizations and that it emphasizes the absolute freedom of association that exists. The Government recalls that trade union membership used to be compulsory and that the registration of a first-level organization required the authorization of the trade union federation or of political parties, and that State buildings and resources were provided to the trade unions concerned. The Government adds that there are now trade unions with more members than the total membership of the four existing trade union confederations, and that over 80 per cent of the organizations existing prior to 1999 have disappeared, and that the number of trade unions at present is greater at any time in history. 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 recalls that the ITUC alleges that the Government is promoting parallel trade unions through the CNE and that FEDECAMARAS has been complaining for years that the Government is also promoting parallel organizations of employers. ***The Committee once again requests the Government to take the necessary measures for this investigation to be undertaken, and to provide information on this subject.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1968)***

*Comments from trade union organizations.* The Committee notes the Government's reply to the comments from the International Trade Union Confederation (ITUC) (4 August 2011 and 31 July 2012), the Confederation of Workers of Venezuela (CTV) (31 August 2011 and 31 August 2012), the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) (24 August 2012) and the Independent Trade Union Alliance (ASI) (30 August 2011 and 31 August 2012).

*Legislative matters.* The Committee notes the adoption of new Basic Labour Act No. 6076 of 7 May 2012 concerning labour and workers (LOTTT), which contains provisions providing full protection for workers against acts of anti-union discrimination and interference, with sufficiently dissuasive sanctions.

*Article 4 of the Convention. Free and voluntary negotiation.* The Committee observes that section 449 of the LOTTT provides that "discussion of proposals for collective bargaining shall take place in the presence of a labour official, who shall chair the meetings". The Committee considers that this amounts to interference in the negotiations between the parties and is therefore contrary to the principles of free and voluntary negotiation and the autonomy of the parties. ***The Committee emphasizes the importance of amending this provision to bring it into full conformity with the abovementioned principles and requests the Government to indicate the measures taken or contemplated in this respect.***



Moreover, the Committee notes that section 450 concerning the registration of collective agreements states that “the labour inspector shall verify its conformity with the applicable public order regulations, with a view to granting approval”. Section 451 concerning the granting of approval states that “if the labour inspector considers it appropriate, he or she shall make the appropriate observations or recommendations to the parties instead of granting approval, and such observations and recommendations must be complied with within the next 15 working days”. The Committee recalls that, in general terms, making the entry into force of collective agreements concluded by the parties dependent on their approval by the authorities is contrary to the principles of collective bargaining established by Convention No. 98. The Committee considers that provisions of this sort are compatible with the Convention on condition that refusal of approval is restricted to cases in which the collective agreement contains flaws regarding its form or does not comply with the minimum standards laid down by the general labour legislation. ***The Committee requests the Government to provide further information on the scope of sections 450 and 451.***

Furthermore, the Committee notes that section 465 concerning mediation and arbitration states, with regard to bargaining by branch of activity, that “if conciliation is not possible, the labour official, at the request of the parties or on his or her own initiative, shall submit the dispute to arbitration unless the participating trade union organizations state their intention to exercise the right to strike”. The Committee further notes that section 493 states that “should a dispute be submitted to arbitration, an arbitration board composed of three members shall be established. One member shall be chosen by the employers from a list submitted by the workers; another shall be chosen by the workers from a list submitted by the employers; and the third member shall be chosen by mutual agreement. If no agreement is reached on nominations at the end of five successive days, the labour inspector shall designate the representatives”. The Committee recalls that arbitration ordered by the authorities should be restricted to essential services in the strict sense of the term and cases involving public servants exercising authority in the name of the State and considers that the designation of members by the labour inspector does not ensure that the parties will have confidence in the board that is established. ***The Committee requests the Government to indicate the measures contemplated to abolish arbitration ordered on the initiative of the authorities (except in the abovementioned cases) and to ensure that the composition of the arbitration board enjoys the confidence of the parties.***

*Pending issues.* In its previous comments, the Committee requested the Government to send the texts of the administrative decisions issued by the labour authority in the last three years pursuant to the provisions on trade union referendums. The Committee notes that the Government attaches copies of three decisions issued in 2010 and 2011 to its report. The Committee also recalls that it asked the Government for statistics on the collective agreements in force. The Committee notes the Government’s statement that in 2010 a total of 540 collective agreements were signed covering 2,308,542 workers, 452 agreements were signed in 2011 covering 742,647 workers and 230 were signed between January and July 2012. ***The Committee requests the Government to continue to provide statistics relating to the collective agreements signed in both the public and private sectors. The Committee requests the Government to reply to the comment of the CTV that the vast majority of collective agreements in the public sector have expired (more than three years ago), have lost their substance and are being applied without being legally valid, with the right to collective bargaining denied due to the authorities invocation of so-called “overdue elections” (not convoking or not concluding the electoral process).***

## Yemen

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1976)***

*Comments from employers’ and workers’ organizations.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee. The Committee also notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 31 July 2012, alleging that, amidst the uprising and political conflict, there is only one official trade union organization and that the law is not conducive to trade union activities. The ITUC adds that striking teachers were dismissed, striking sanitation workers were injured, and that the offices of the Yemeni Journalists’ Syndicates were attacked. ***The Committee requests the Government to provide its comments thereon.***

*The Law on Trade Unions (2002).* The Committee notes that the Government does not refer to the Law on Trade Unions in its report. In these circumstances, the Committee recalls its previous observations.

*Article 2 of the Convention.* 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 had noted in its previous comments that the Government indicated that: (1) it has never imposed any prohibition on trade union activities; (2) 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; (3) there is no

monopoly in representation since, in the framework of social dialogue, the interlocutor is the most representative trade union; and (4) at the moment, the GFTUY is the most representative association of workers. While noting that the Government did 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 Unions 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.***

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 on freedom of association and collective bargaining, 1994, 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. ***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. ***The Committee must once again reiterate the abovementioned request.***

*The draft Labour Code.* The Committee recalls that in its previous comments it had noted that: (1) a draft Labour Code was under discussion and that several of its provisions were not in conformity with the Convention; (2) with the active participation of the ILO, it is working on the enactment of the new Labour Code; and (3) that the draft Code was 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. The Committee notes that the Government indicates in its report that, due to the circumstances in Yemen since 2011, the House of Representatives has not held meetings for discussing and adopting new laws. ***The Committee hopes that the draft Labour Code will be adopted in the near future and that it will take into account its comments concerning the need to take the necessary measures to further amend or revise the following provisions:***

- *Article 2.* The need to: (1) ensure that domestic workers, the magistracy and the diplomatic corps, excluded from the draft Labour Code (section 3B(2) and (4)), may fully benefit from the rights set out in the Convention; and (2) consider revising section 173(2) of the draft Code so as 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 need to indicate whether foreign persons holding diplomatic passports and those working in Yemen on the basis of political visas, who are excluded from the scope of the draft Code under section 3B(6) and covered by the specific legislation, regulations and agreements on reciprocal treatment, can in practice establish and join organizations of their own choosing.
- *Article 3.* The need 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, which will be issued by the Council of Ministers once the Labour Code is promulgated.
- The need to further amend section 211 of the draft Labour Code, which provides that strike notice must include an indication as to the duration of a strike to ensure that a trade union can call a strike for an indeterminate period of time.
- *Articles 5 and 6.* The need to withdraw section 172 from the draft Labour Code since it appears to prohibit the right of workers' organizations to affiliate with international workers' organizations and contradicts section 66 of the Law on Trade Unions which ensures the right to affiliate with international organizations and the current practice.

***The Committee trusts that the present legislative reform will bring the national legislation into full conformity with the Convention, in accordance with the abovementioned comments, and 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)**

*Articles 2 and 3 of the Convention. Protection against anti-union practices.* While noting that the legislation provides for adequate protection against interference, the Committee recalls that for a number of years it has 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. The Committee had noted that draft legislative amendments to the Labour Code were under way and that the Government would endeavour to add provisions on penal responsibility of employers committing acts of interference in trade union affairs in order to bring the legislation into conformity with the Convention. The Committee notes the Government's indication that the comments of the Committee would be taken into account when making amendments to the Act on Trade Unions and supplementing the Penal Code. ***The Committee once again requests the Government to indicate the progress made in this respect, and to provide copies of the amended legislative texts aimed at ensuring full respect for the rights enshrined in the Convention, as soon as they have been adopted.***

*Article 4. Refusal to register 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 that the Government reiterated that it had adopted the Committee's proposal with regard to the amendment of the abovementioned section of the Labour Code. ***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.* The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in its communication dated 31 July 2012, alleging notably that, in both the private and public sectors, many trade unions are not allowed to negotiate collective agreements. ***The Committee requests the Government to communicate its observations thereon.***

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 established in certain institutions, the Committee expresses once again the firm hope that the Government will provide the statistics requested in its next report or at least the information available.***

***Finally, the Committee requests the Government to indicate the legal provisions which guarantee the right to collective bargaining of public servants not engaged in the administration of the State.***

## Zambia

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)***

In its previous comments, the Committee had noted that Industrial and Labour Relations (Amendment) Act No. 8 of 2008 (ILRA) had been adopted. The Committee, however, noted that most of the issues raised in its previous comments still remain unattended to and were not taken into account during the process of the labour law review. The Committee notes that the Government indicates in its report that: (1) the moratorium on the discussion of the ILRA has been lifted as the matters before the courts of law arising from a petition by the Federation of Free Trade Unions of Zambia (FFTUZ) have been withdrawn; (2) it is willing to consider the Committee's concerns and has engaged the social partners through the tripartite structures; and (3) it has engaged a consultant who will aid the Government in conducting a comprehensive labour review. ***The Committee hopes that this labour review will take into account its comments and recalls in particular that measures should be taken to bring the following provisions of the 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 amounting to denial of the right of workers to establish organizations without previous authorizations.

*Article 3.*

- 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.
- 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, it is referred to the court; 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; and 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 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.***

***Workers’ and employers’ organizations comments.*** The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 31 July 2012 alleging that protests are not tolerated in the mining sector and that strikers suffer retaliation as well as threats and intimidation. ***The Committee requests the Government to provide its observations on these comments.***

The Committee notes the Government’s observations on the 2010 ITUC comments: (1) concerning the allegation that the Zambia Revenue Authority (ZRA) has consistently used delaying tactics to effectively deny recognition to the Zambia Union of Financial Institutions and Allied Workers (ZUFIAW), the Government indicates that the enabling legislation may need to be reviewed in order for the ZUFIAW to be recognized by the ZRA; and (2) concerning the allegation of intimidation of strikers through police intervention, the Government indicates that it has not used the police to intimidate striking workers but that the police may be called upon to maintain law and order to secure the property of the organization and the lives of employees and employers. ***The Committee requests the Government to indicate the measures it will take to amend the legislation in order for the ZUFIAW to be recognized by the ZRA.***

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)  
(ratification: 1996)***

***Situation of the revision of the Industrial and Labour Relations Act (as amended by the Industrial and Labour Relations (Amendment) Act, 2008) (ILRA).*** In its previous comments, the Committee noted that the Industrial and Labour Relations (Amendment) Act No. 8 of 2008 had been adopted. The Committee, however, noted 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 noted 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, had been referred to the Government for consideration, although since 1997, the said provisions have not been used against workers or employers. The Committee noted the Government’s indication that the moratorium on the discussion of the ILRA has been lifted as the matter before the courts of law arising from a judicial petition by the Federation of Free Trade Unions of Zambia (FFTUZ) has been withdrawn. The Committee further notes that the Government indicates that it will consider the Committee’s observations, has engaged the social partners through the tripartite structures and has engaged a consultant who will aid the Government in conducting a comprehensive labour review. In addition, the Government and its social partners will undertake a study

tour of the Labour Courts within the region to learn from their legal practices. *The Committee hopes this labour review will take into account its comments, and recalls in particular that measures should be taken to bring the following provisions of the ILRA into conformity with the Convention, in full consultation with the social partners.*

*Articles 1–4 of the Convention. Protection against anti-union acts and promotion of free and voluntary collective bargaining.* The Committee recalls that its previous comments concerning the ILRA were the following:

- Section 85(3) of the ILRA 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 violations 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 take the necessary measures to shorten the maximum period within which a court should consider the matter and issue its ruling thereon.*
- Section 78(1)(a) and (c) and section 78(4) of the ILRA allows, in certain cases, either party to refer the dispute to a court or arbitration. The Committee recalls that arbitration imposed by 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 amending 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.*

*Comments of the International Trade Union Confederation (ITUC).* Finally, the Committee notes the comments made by the ITUC in a communication dated 31 July 2012, alleging anti-union intimidation and harassment of workers as well as retaliation towards union representatives. *The Committee requests the Government to provide its observations on these comments.*

## Zimbabwe

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2003)**

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

The Committee recalls that the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), 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 (ONHR); 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 that the ILO technical assistance to support the Government and the social partners in implementing the above recommendations continued throughout 2012 and in this respect, it notes, in particular, that two Zimbabwe Supreme Court judges have participated in a training course on international labour standards, judicial independence and ethics for judges, magistrates, arbitrators and lawyers and that two training workshops on human and trade union rights for the police, security forces and Attorney General’s Office took place in the country. In relation to the Commission of Inquiry’s recommendation that social dialogue be strengthened, the Committee welcomes the Government’s indication that the principles for the Tripartite Negotiating Forum (TNF) legislation were approved by Cabinet. Following the approval, a tripartite consensus building workshop was carried out in July 2012 towards the drafting of the TNF Bill. In order to expedite the drafting process, two internal workshops were undertaken in September and October 2012, and managed to produce a draft which is now with the Attorney-General’s Office which will subsequently pass it to Cabinet and Parliament. The Government indicates that it would need ILO support to hold a workshop to discuss the Bill with social partners, and that it anticipates that by the second quarter of 2013, Parliament would have enacted the TNF Bill. The Government also provides information on the ongoing dissemination of the Kadoma Declaration – “Towards a shared national economic and social vision” which aims at depoliticization of workplaces. Moreover, the Committee notes the Government’s indication that several workshops will be held in the near future, including training workshops for conciliators and arbitrators on freedom of association and collective bargaining Conventions and two training workshops for national employment councils’ councillors drawn from trade unions and employers’ organizations and the promotion of freedom of association and collective bargaining at sector level.

The Committee recalls that it had previously urged the Government to provide information on the steps taken to ensure that the Zimbabwe Human Rights Commission and the ONHR can adequately contribute to the defence of trade union and human rights. The Committee notes the Government's indication that the Human Rights Bill to operationalize the Human Rights Commission was passed by Parliament and now awaits Presidential assent. The Government has also crafted activities involving the Human Rights Commission and ONHR on issues to deal with human rights in the world of work so as to give effect to the recommendations of the Commission of Inquiry. ***The Committee requests the Government to provide in its next report detailed information on the outcome of such activities.***

*Comments made by workers' organizations.* The Committee recalls that it had previously requested the Government to provide its observations on the alleged cases of suspension and mass dismissals of workers following their participation in protests and strikes, as referred to by the International Trade Union Confederation (ITUC) in its 2011 communication. The Committee notes the Government's indication that it was made aware of these cases through the complaint by the ITUC to the ILO and that no attempt was made to report these cases to the Ministry of Labour for application of domestic remedies given that the law provides for protection of workers from such acts. The Government therefore requests the complainants to approach the Ministry of Labour for redress.

The Committee notes the comments made by ITUC and the Zimbabwe Congress of Trade Unions (ZCTU) on the application of the Convention in their communications dated 31 July and 29 August 2012, respectively, as detailed further below.

*Trade union rights and civil liberties.* The Committee recalls that it had previously requested the Government to indicate all measures taken or envisaged to ensure safety of Ms Hambira, General Secretary of the General Agriculture and Plantation Workers' Union of Zimbabwe (GAPWUZ), allegedly forced to exile following threats received for reporting violations of farm workers' rights, should she decide to return to the country. The Committee notes that in its report, the Government reiterates that the police and courts have confirmed that Ms Hambira has no pending case against her. It is therefore the Government's view that she is guaranteed safety upon return, like any other citizen of the country. The Committee notes, however, that according to the ZCTU, while the Government, in response to the request made by the Conference Committee on the Application of Standards in June 2011, has committed itself to ensuring Ms Hambira's safe return, no measures have been taken to that effect. ***The Committee therefore requests the Government to take the necessary measures to ensure Ms Hambira's safety upon her return to the country. The Committee requests the Government to provide information on any concrete measures taken or envisaged in this respect.***

The Committee further recalls that it had previously noted the allegations submitted by the ZCTU and ITUC relating to the instances of banning of trade union activities (workshops, commemoration events, processions and May Day celebrations) and requested the Government to provide its observations thereon. The Committee notes the Government's indication that during the abovementioned two training workshops for the law enforcement bodies, the Ministry of Labour and Social Services has brought to the attention of the participants its position regarding the non-application of the Public Order and Security Act (POSA) to trade union meetings. The Government stresses that the few information-sharing sessions involving the law enforcement agencies conducted since July 2011 had a positive impact and that the May 2012 celebrations throughout the country took place without incident. In the Government's opinion, this vindicates the idea that with more information-sharing activities involving more law enforcement officers across the country, such incidents will be a thing of the past. The Committee notes, however, that at its May–June 2012 meeting, the Committee on Freedom of Association examined Case No. 2862 concerning similar allegations. In this respect, the Committee notes with ***concern*** the alleged difficulties faced by the ZCTU in organizing public processions and gatherings to commemorate International Women's Day and International Labour Day in 2012. The Committee further notes with ***concern*** that the ITUC and ZCTU 2012 communications also contain numerous new allegations referring to the obstruction of trade union activities and, in particular, the interruption of trade union activities by the police, interrogations and threats to arrest trade union officials. ***The Committee requests the Government to provide detailed observations thereon. It expects that the Government will intensify its efforts in ensuring 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. It also expects that the Government will take the necessary steps to ensure that training on human and trade union rights for the police and security forces continue.***

The Committee recalls that it has previously requested the Government to carry out, together with the social partners, a full review of the application of the POSA in practice and considered that concrete steps should be taken to enable the elaboration and promulgation of clear lines of conduct for the police and security forces with regard to human and trade union rights. The Committee notes that the Government submits in this regard that it was necessary to share information on international labour standards with the law enforcement bodies before a joint review of the application of the POSA could be made with the social partners. The Government informs that the participants of the abovementioned workshops for the law enforcement agencies recommended that in the future, such training activities should include representatives of the social partners. The Government also points out that it is currently engaged with the International Labour Office with regard to a handbook on international labour standards and national law and practice for the use in training by various actors in the labour market. ***While taking due note of this information, the Committee expects that a full review of the application of the POSA in practice will be carried out together with the social partners without further delay. The Committee further expects that in addition to a training handbook referred to by the Government,***

*clear lines of conduct for the police and security forces will be elaborated and promulgated without delay as has been requested by the Conference Committee on the Application of Standards in June 2011 and more recently by the Committee on Freedom of Association (see 364th Report, June 2012, paragraph 1145). It requests the Government provide information on all measures taken or envisaged in this respect.*

Furthermore, the Committee recalls that in its previous observation it had noted the Government's indication that the POSA, notwithstanding its non-application to trade union meetings, was being amended. Noting copies of two sets of amendments proposed back in 2009, the Committee had requested the Government to clarify the status of these amendments, particularly in the light of the fact that in the framework of the Universal Periodic Review (UPR) process of the United Nations Human Rights Council, the Government of Zimbabwe had clearly indicated that it did not support the recommendations calling for the amendment of the POSA (see A/HRC/19/14, Human Rights Council, 12th session, 3-14 October 2011). The Committee notes the Government's explanation to the effect that while the role of the Ministry of Labour and Social Services is to ensure that the POSA is not applied to trade union activities, its amendment is under the Ministry of Justice purview. Accordingly, the Minister of Justice is best qualified to make pronouncement on the POSA in the context of the UPR. The Government also indicates that the abovementioned amendments of the POSA were proposals emanating from private members and were not initiated by the Government. ***In the light of the continuing difficulties with the application of the POSA in practice and the Commission of Inquiry's recommendation that the POSA be brought into line with the Convention, the Committee requests the Government to take the necessary measures, in consultation with the social partners, in order to amend the POSA. It requests the Government to provide information on all concrete steps taken or to be taken in this respect.***

The Committee further recalls the Commission of Inquiry's recommendation that steps be taken by the authorities to bring to an end all outstanding cases of trade unionists arrested under the POSA. It further recalls that in its previous observation it had urged the Government to ensure that cases of trade unionists arrested under the POSA were withdrawn without further delay and to provide detailed information in this respect. The Committee notes that the Government forwards a communication dated 29 March 2012 addressed by the Office of the Attorney-General to the Ministry of Labour, which contains information on criminal cases involving ZCTU members and leaders. According to this report, which groups the cases by regions, following completion of relevant investigations, the prosecution of the accused trade unionists was either declined or charges against them were withdrawn for the lack of evidence. The report indicates, however, that any updates on cases that were referred to the Supreme Court for constitutional applications will be communicated in due course. The Committee notes, however, that in its 2012 communication, the ZCTU indicates that the recommendation of the Commission of Inquiry to bring to an end to all outstanding cases of arrested trade unionists has not been implemented. ***In the light of this contradicting information, the Committee requests the Government to further engage with the ZCTU on this matter and to indicate how many cases involving trade unionists arrested under the POSA are still pending, particularly before the Supreme Court, and to provide information on all steps taken by the authorities to bring them to an end.***

*Labour law reform and harmonization.* The Committee had previously requested the Government to provide information on all developments and progress made in revising and harmonizing the Labour Act, Public Service Act and all other relevant laws and regulations. The Committee notes the Government's indication that together with the social partners it had finalized the development of principles for harmonization and review of labour laws, which have now been submitted to Cabinet for consideration. The Government submits a copy of the Memorandum to Cabinet by the Minister of Labour and Social Services on Principles for the Harmonization and Review of Labour Laws in Zimbabwe. The Government reiterates that the thrust of the harmonization and reform process, as reflected in the Memorandum, is essentially to give effect to the comments and recommendations of the Committee. The Government adds that it is anticipated that Cabinet would approve the principles by the end of December 2012. After the approval, the Government intends to hold a consensus building workshop in December 2012 towards the drafting of the labour law reform bill. The Government indicates that it has submitted the concept note to the ILO Country Office in Harare, and calls for ILO support during the workshop, in order to have the confidence of the social partners. The Government anticipates Parliament to enact the new labour law by the third quarter of 2013. ***The Committee requests the Government to provide information on all developments and progress made in this respect.***

***The Committee expresses the firm hope that the law and practice will be brought fully into line with the Convention in the very near future and requests the Government to provide, in its next report, detailed information on all other measures taken to implement the recommendations of the Commission of Inquiry. It encourages the Government to continue cooperating with the ILO and the social partners in this regard.***

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)***

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

The Committee recalls the recommendations of the Commission of Inquiry established 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 Convention No. 98, as detailed in the comments on the application of Convention No. 87. The Committee

notes that the ILO technical assistance to support the Government and the social partners in implementing these recommendations continued throughout the reporting period. It recalls in this respect that it had requested the Government to provide 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. The Committee notes the information provided by the Government in this regard, as reflected in the 2011 and 2012 comments on the application of Convention No. 87 and further below. It further notes the comments made by the International Trade Union Confederation (ITUC) and the Zimbabwe Congress of Trade Unions (ZCTU) on the application of the Convention in their communications dated 4 August 2011, 31 July and 29 August 2012, respectively. ***It requests the Government to provide its observations thereon.***

The Committee recalls that in its previous comments it had taken note of the initiated labour law reform and harmonization process, and expressed the firm hope that the relevant legislative texts, and in particular, the Labour Act and the Public Service Act, would be brought in line with the Convention. More specifically, the Committee had requested the Government to take the necessary measures to ensure that an adequate protection against acts of anti-union discrimination is enshrined in the national legislation, and applied and respected in practice; that restrictions on collective bargaining rights are lifted; and that public servants, with the only possible exception of those who, by their functions, are directly engaged in the administration of the State, are also granted collective bargaining rights. The Committee recalls that in its 2011 comments on the application of Convention No. 87 it had taken due note of a copy of the draft Principles for the Harmonization and Review of Labour Laws in Zimbabwe and the information provided by the Government on the specific sections of the labour law which it intended to amend in the framework of the reform. On that occasion, the Committee noted with interest that the revision of the labour legislation envisaged taking into account its comments and welcomed the fact that this process involved all social partners. The Committee notes that in its 2012 report, the Government indicates that, together with the social partners, it had finalized the development of principles for harmonization and review of labour laws, and had submitted them to Cabinet for consideration. The Government reiterates that the thrust of the harmonization and reform process is essentially to give effect to the comments and recommendations of the Committee. The Government adds that it is anticipated that Cabinet would approve the principles by the end of December 2012. After the approval, the Government intends to hold a consensus-building workshop towards the drafting of the labour law reform bill. The Government indicates that it has submitted the concept note to the ILO country office in Harare, and calls for ILO support during the workshop, in order to have the confidence of the social partners. The Government anticipates that Parliament will enact the new labour law by the third quarter of 2013. ***The Committee requests the Government to provide information on all developments and progress made in this respect and hopes that the ILO will continue to support this process.***

On the issue of protection against acts of anti-union discrimination, the Government refers to section 89 of the Labour Act, which empowers the Labour Court and arbitrators to order reinstatement in a job or payment of damages, including punitive damages to an employee who has been wrongfully dismissed. It is the Government's view that this section provides for sufficiently dissuasive sanctions in cases of anti-union discrimination. The Government further indicates that it will continue to encourage the application of this provision in practice, as requested by the Commission of Inquiry and the Committee. While taking due note of this information, the Committee observes allegations of anti-union discrimination as outlined in the ITUC and ZCTU communications, which involve cases of suspension and dismissals for protesting against poor working conditions and low monthly wages. ***The Committee requests the Government to provide its observations thereon, as well as statistical information on the number of complaints relating to anti-union discrimination lodged with the competent authorities, number of complaints examined, sample judicial decisions issued, average duration of procedures and sanctions applied.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 11** (Kyrgyzstan, Pakistan, Rwanda); **Convention No. 87** (Burkina Faso, Burundi, Cambodia, Croatia, Djibouti, Egypt, Eritrea, Ghana, Grenada, Haiti, Hungary, Indonesia, Kyrgyzstan, Myanmar, Pakistan, Papua New Guinea, Peru, Portugal, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Samoa, Serbia, Sierra Leone, Spain, Sri Lanka, Suriname, Swaziland, Switzerland, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Turkmenistan, Uganda, United Kingdom, United Kingdom: Anguilla); **Convention No. 98** (Armenia, Barbados, Burkina Faso, Iceland, Ireland, Kyrgyzstan, Malawi, Senegal, Slovakia, South Africa, Suriname, Tajikistan, Timor-Leste, Turkmenistan, United Kingdom, United Kingdom: Bermuda, United Kingdom: British Virgin Islands, United Kingdom: St Helena); **Convention No. 135** (Burundi, Democratic Republic of the Congo, Iraq, Russian Federation); **Convention No. 151** (Slovakia); **Convention No. 154** (Kyrgyzstan, Russian Federation, Uganda).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 98** (Togo); **Convention No. 141** (Burkina Faso).



## Forced labour

### 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. Civil service.* For a number of years 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 concerning civil 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 civil service ranging from one to four years before being able to exercise an occupation or obtain employment.

The Committee also previously noted that, under sections 32 and 38 of the Act, any refusal to perform civil 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 dinars). 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 civil service or can produce documentation proving that they have completed it. Furthermore, any private employer who knowingly employs a citizen who has evaded civil service is liable to imprisonment and a fine. Hence, even though persons liable to civil service enjoy conditions of work (remuneration, seniority, promotion, retirement, etc.) similar to those of regular public sector workers, they perform this service under threat since, 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 civil service falls within the concept of compulsory labour within the meaning of *Article 2(1)* of the Convention. Moreover, since it consists of a contribution by the persons concerned to the economic development of the country, this compulsory service is also incompatible with Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which has also been ratified by Algeria.

The Committee further noted that under section 2 of Ordinance No. 06-06 of 15 July 2006, civil 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 enterprises.

In its last report the Government indicates that civil service concerns only doctors specializing in public health and that this was established in response to the need to bring essential specialists' care to the populations of isolated regions who have no access to it. Moreover, the Government indicates that, at the National Conference on Hospital Reform Policy (February 2011), discussions were held concerning the abolition of civil service for these doctors, and that the ultimate goal would be to leave them free to choose whether to exercise their profession in the public, private or semi-public sector.

*While noting this information, the Committee expresses the strong hope that the necessary measures will be taken to repeal or amend the provisions of Act No. 84-10 of 11 February 1984 concerning civil service 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.*

*Referring to Ordinance No. 06-06 of 15 July 2006, amending and complementing Act No. 84-10 of 11 February 1984 concerning civil service, the Committee reiterates the hope that the necessary measures will be taken to repeal or amend the provisions imposing civil service on specialized doctors. Pending such legislative amendments, the Committee requests the Government to provide information on the number of persons and establishments concerned with regard to civil service, the length of service, and the conditions of work of the persons concerned.*

*Article 2(2)(a). National service.* For a number of years the Committee has been referring 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 observed that they are further required to perform civil 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 Committee noted the Government's indication in its previous report that the civil modality 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 hopes that it will be in a position to send information in its next report on any developments in this matter showing that national law 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.*

### Bahamas

#### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)**

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(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 peaceful participation in a 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.***

## Burundi

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1963)**

*Articles 1(1) and 2(1) of the Convention.* 1. *Compulsory community development work.* In its previous comments, the Committee noted the Government's indication that Legislative Decree No. 1/16 of 29 May 1979, which established the obligation to carry out community development work under penalty of sanctions, had been replaced by Act No. 1/016 of 20 April 2005 organizing municipal administration. According to this Act, which aims at promoting the economic and social development of municipalities not only on an individual but also on a collective and unified basis – municipalities may cooperate through a system of inter-municipality, and it is up to the municipal council to establish the community development programme, monitor its implementation and carry out the evaluation thereof. The Act also provides for a regulatory text determining the organization, mechanisms and rules of procedure of inter-municipality. The Committee noted that although the principle of community work was upheld in the Act, it did not explicitly provide for the voluntary nature of this work or establish the rules for participation in this work. In this respect, the Committee noted that, according to the observations submitted in 2008 by the Trade Union Confederation of Burundi (COSYBU), community work is decided upon without popular consultation and the Government bans the movement of persons throughout the duration of this work. It also noted, according to information available on the Internet site of the Government and the National Assembly, that community work seemed to be organized on a weekly basis and included work of reforestation, cleaning and the construction of economic and social infrastructure such as schools, colleges and health centres. Taking into account this information, the Committee requested the Government to take the necessary steps to adopt the text applying the Act of 2005 and ensure that it explicitly referred to the voluntary nature of participation in this work.

The Committee takes note of new observations received by the COSYBU on 31 August 2012 and forwarded to the Government on 18 September 2012. It notes that the COSYBU confirms that community work is decided upon unilaterally without the population being consulted. The COSYBU refers to the mobilization of the police to prevent the movement of persons during this work. The Committee notes with *regret* that the Government has failed once again to reply to the observations made by the COSYBU and that, for the second consecutive year, it has not provided a report on the application of the Convention. While noting that the Government previously indicated that the legislation does not provide for penalties to be imposed on persons who fail to carry out community work, the Committee observes that community work is carried out by the population without there being a text regulating the nature of this work or rules determining how this work might be required of the population or the way in which it is organized. ***In these circumstances, the Committee once again expresses the hope that the Government will take the necessary steps to adopt the text applying Act No. 1/016 of 20 April 2005 organizing municipal administration, particularly with respect to the***

*participation in and organization of community work, to ensure that the voluntary nature of participation in this work is explicitly set out in the legislation. Meanwhile, the Committee asks the Government to provide information on the type and duration of the community work carried out and the number of persons concerned.*

2. *Compulsory agricultural work.* For many years, the Committee has been requesting the Government to take the necessary measures to bring a number of texts providing for the compulsory participation in certain types of agricultural work into line with the Convention. It has stressed the need to set out in the legislation the voluntary nature of agricultural work resulting from obligations relating to the conservation and utilization of the land and the obligation to recreate and maintain minimum areas of fruit crops (Ordinances Nos 710/275 and 710/276 of 25 October 1979), as well as the need to formally repeal certain texts on compulsory cultivation, portage and public works (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953 and the Decree of 10 May 1957). *Noting that the Government previously indicated that these texts, which dated from the colonial period, had been repealed and that the voluntary nature of agricultural work had now been set out in the legislation, the Committee requests the Government once again to send a copy of the texts that repeal the abovementioned legislation and set out the voluntary nature of agricultural work.*

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

## Cambodia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1969)**

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Trafficking in persons.* The Committee previously noted the adoption of the Law on Suppression of Human Trafficking and Sexual Exploitation (2008), and requested information on its application in practice.

The Committee notes the Government's statement that it has taken measures to prevent and suppress trafficking in persons, as well as to rescue victims and punish perpetrators. The Government states that it disseminates and distributes educational materials concerning the relevant legislation and international legal norms, as well as on the deceitful methods used by the perpetrators of trafficking. The Committee also notes the Government's statement that the National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labour Exploitation and Sexual Exploitation in Women and Children (STSLs) has established a national action plan for 2011–13 on the suppression of human trafficking and sexual exploitation. The Government states that the STSLs cooperates with groups at the national, provincial and municipal levels, as well as with ministerial working groups and the authorities responsible for the implementation of memoranda of understanding (MOUs) with other countries in the region. In this regard, the Government indicates that it engages in regional cooperation to protect victims of trafficking. In addition, the Committee notes the Government's statement that the Village/Commune Safety Policy is playing a crucial role in the implementation of activities to combat human trafficking.

The Committee notes that the Committee on Economic, Social and Cultural Rights, in its concluding observations of 12 June 2009, expressed serious concern regarding reports that an estimated 400–800 Cambodian women and children are trafficked to foreign countries per month, as well as regarding the low number of prosecutions and convictions of traffickers (E/C.12/KHM/CO/1, paragraph 26). The Committee further notes that the Committee against Torture, in its concluding observations of 20 January 2011, expressed concern regarding reports that a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour (CAT/C/KHM/CO/2, paragraph 22). *The Committee urges the Government to strengthen its efforts to combat trafficking in persons, including within the framework of the national action plan 2011–13 on the suppression of human trafficking and sexual exploitation, and to provide information on the measures taken in this regard. It requests the Government to provide information, in its next report, on the application of the Law on Suppression of Human Trafficking and Sexual Exploitation (2008) in practice, including the number of investigations, prosecutions, convictions and specific penalties imposed. It further requests the Government to indicate the measures taken to provide training to law enforcement officials, including labour inspectors, on the phenomenon of trafficking. Lastly, the Committee requests the Government to supply information on the specific measures taken to provide protection and assistance to victims of trafficking, as well as the results achieved.*

2. *Vulnerability of migrant workers to conditions of forced labour.* The Committee notes the information in the report of the International Trade Union Confederation (ITUC) entitled "Internationally Recognised Core Labour Standards in Cambodia: Report for the WTO General Council Review of the Trade Policies of Cambodia" of November 2011 that migrant workers from Cambodia are vulnerable to situations of forced labour, particularly women domestic workers in Malaysia and men on fishing boats in Thailand. This report also indicates that the national legislation on recruitment, placement, and protection of migrant labour is limited and outdated. This report further states that Cambodian migrant workers are generally not aware of their rights during their work abroad, although the Ministry of Labour began providing pre-departure training on rights in 2011. The Committee also notes that the Government is in the process of developing an MOU with the Government of Malaysia concerning migrant domestic workers.

The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and

physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. *The Committee therefore requests the Government to provide information on the measures taken to ensure that migrant workers are protected from abusive practices and conditions that amount to the exaction of forced labour. In this regard, the Committee requests the Government to provide information on measures adopted specifically tailored to the difficult circumstances faced by migrant workers, including measures to prevent and respond to cases of abuse of migrant workers. It further requests the Government to provide copies of the legislation relevant to migrant workers with its next report.*

3. *Work exacted in drug rehabilitation centres.* The Committee notes that in 2006, a Circular on the Implementation of Education, Treatment and Rehabilitation Measures for Drug Addicts was issued, stipulating that local authorities must establish compulsory drug treatment centres. The Committee also notes the information in a World Health Organization report entitled “Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam” that the majority of persons in these drug detention centres in Cambodia are not there voluntarily; they may be admitted following legal procedures, on the request of their families, or simply following arrest. The Committee further notes that the Committee against Torture, in its concluding observations of 20 January 2011, expressed concern at continuing reports of round-ups by law enforcement officials in the streets and the subsequent holding of people, including sex workers, people who use drugs, homeless people, beggars, street children and mentally ill persons in social affairs centres against their will and without any legal basis and judicial warrant (CAT/C/KHM/CO/2, paragraph 20). Lastly, the Committee notes the information from the United Nations Office on Drugs and Crime that there have been reports that persons in these drug rehabilitation centres are engaged in compulsory labour. In this regard, the Committee recalls that, according to *Article 2(2)(c)* of the Convention, work can only be exacted from a person as a consequence of a conviction in a court of law. *It therefore requests the Government to provide information on how persons enter drug rehabilitation centres and social affairs centres, and whether persons detained in these centres are required to engage in work. It requests the Government to provide copies of the relevant legislation and regulations governing drug rehabilitation centres, with its next report.*

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

## 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 previously noted Ordinance No. 001/PCE/CEDNACVG/91 organizing the armed forces, according to which 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 noted 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)**

*Article 2(2)(a) of the Convention.* 1. *Work exacted under compulsory military service laws.* For many years the Committee has been drawing the Government’s attention to the fact that section 1 of Act No. 16 of 27 August 1981 establishing compulsory military service is not in conformity with the Convention. Under this provision, 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 has repeatedly emphasized 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.

The Committee notes that the Government once again indicates that it is committed to repealing the abovementioned Act and this will be seen in practice in the revision of the Labour Code, which is in progress. ***The Committee again expresses the strong hope that when the Labour Code is revised, the necessary steps will be taken to amend or repeal the Act establishing compulsory military service so as to bring the legislation into conformity with the Convention. The Government is requested to supply information on any progress made in this respect.***

2. *Youth brigades and workshops.* In its previous comments the Committee noted the Government's indication that Act No. 31-80 of 16 December 1980 on guidance for youth had fallen into disuse since 1991. Under this Act, the party and mass organizations were supposed to create, over time, all the conditions for establishing youth brigades and organizing youth workshops (type of tasks performed, number of persons involved, duration and conditions of their participation, etc.).

The Committee once again notes the Government's indication that it is committed to repealing the abovementioned Act and this will be seen in practice in the revision of the Labour Code, which is in progress. ***The Committee expresses the strong hope that when the Labour Code is revised, the necessary steps will be taken to formally repeal Act No. 31-80 of 16 December 1980 on guidance for youth.***

*Article 2(2)(d). Requisitioning of persons to perform community work in instances other than emergencies.* For many years the Committee has been drawing the Government's attention to the fact that Act No. 24-60 of 11 May 1960 is not in conformity 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 imprisonment ranging from one month to one year.

The Committee again notes the Government's indication that this Act has fallen into disuse and may be considered as repealed, in view of the fact that the Labour Code (section 4) and the Constitution (article 26), which prohibit forced labour, annul all the provisions of national law which are contrary to them. The Government explains that, in order to avoid any legal ambiguity, a text will be adopted enabling a clear distinction to be made between work of public interest and the forced labour prohibited by the Labour Code and the Constitution. The Government also indicates that the practice of mobilizing sections of the population for community work, on the basis of the provisions of section 35 of the statutes of the Congolese Labour Party (PCT), no longer exists. Tasks such as weeding and clean-up work are carried out by associations, state employees and local communities on a voluntary basis, therefore without any compulsion involved. Moreover, the voluntary nature of work for the community will be established in the revision of the Labour Code in such a way as to clearly bring the national legislation into conformity with the provisions of the Convention. ***The Committee notes this information and hopes that appropriate measures will be taken to clarify the situation in both law and practice, especially by the adoption of a text enabling a distinction to be made between work in the public interest and forced labour.***

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

## Democratic Republic of the Congo

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1960)***

The Committee notes the observations made by the International Trade Union Confederation (ITUC) on the application of the Convention, which were received on 31 August 2012 and forwarded to the Government on 11 September 2012.

*Articles 1(1), 2(1) and 25 of the Convention. Forced labour and sexual slavery in the context of armed conflict.* In its previous observation, the Committee expressed its concern at the various reports of a number of United Nations bodies on the situation in the Democratic Republic of the Congo, which underlined the gravity of the human rights situation in the country and referred to violations committed by the state security forces and other armed groups, including cases of forced labour and sexual slavery. The Committee noted that, following its examination of this case in June 2011, the Conference Committee on the Application of Standards "noted with concern the information provided which bore witness to the gravity of the situation and the climate of violence, insecurity and the violation of human rights which prevailed in the country, especially in North Kivu. This information confirmed that cases of abduction of women and children, with a view to their use as sexual slaves and exaction of forced labour, particularly in the form of domestic work, were frequent and continued to occur. Moreover, in mines, the workers were hostages of conflicts for the exploitation of natural resources and victims of exploitation and abusive practices, some of which amounted to forced labour. The Conference Committee observed that failure to comply with the rule of law, legal insecurity, the climate of impunity and the difficulties faced by victims in gaining access to justice favoured all of these practices [...] The Conference Committee appealed to the Government to take urgent and concerted measures to bring such violations to an immediate end ...".

The Committee also noted that, in its observations submitted in September 2011, the Confederation of Trade Unions of Congo (CSC) confirmed the practices of abduction of women and girls and, to a lesser degree, of men and boys with a view to their being used for forced labour and sexual slavery by the armed groups. Elderly women were also being abducted for domestic work. The trade union referred to specific cases of abduction and indicated that the worst affected areas were Walikale, Rutshuru, Masisi and North Kivu.

The Committee notes that, in its observations, the ITUC confirms the persistence of cases of sexual slavery, especially in mines in the regions of North Kivu, Province Orientale, Katanga and East Kasai, perpetrated by illegal armed groups and elements of the Armed Forces of the Democratic Republic of the Congo (FARDC). The ITUC emphasizes that the persons concerned have no chance of escaping because they are guarded 24 hours a day by soldiers. The ITUC also refers to several cases of the forced enrolment of boys and young men by various armed groups, especially by the troops of Bosco Ntaganda, in the Masisi territory, or by the rebels of the M23, in particular in the province of North Kivu. The ITUC lists several attacks carried out by these groups in 2012 in various communities in this province, during which violence was systematically used to force civilians to transport arms, ammunition, booty from looting and other provisions up to the front line. The ITUC refers to similar action by the Lord's Resistance Army (LRA) and the Democratic Forces for the Liberation of Rwanda (FDLR). These groups enter camps where displaced persons have taken refuge and threaten them by accusing them of collaborating with one or another armed group. They are then forced to transport arms or goods, to build houses or to work in the fields for the rebels or the militia. The ITUC stresses that the authors of these actions are never punished because no case has ever been brought before the courts.

The Committee *deplores* the lack of information from the Government on the measures taken to bring an end to these serious violations of the Convention. The Committee is even more *concerned* because, according to information sent by the ITUC and that available from various United Nations bodies, the east of the Democratic Republic of the Congo has been the scene of a renewed outbreak of hostilities in recent months between the regular Congolese forces and armed groups, resulting in massive human rights violations. In a press release dated 27 July 2012, the United Nations High Commissioner for Refugees (UNHCR) condemned the violence perpetrated against civilians, which included "indiscriminate and summary killings of civilians, rape and other sexual abuse, torture, arbitrary arrests, assaults, looting, extortion of food and money, destruction of property, forced labour, forced military recruitment, including children, and ethnically motivated violence". ***In view of the gravity of the situation, the Committee urges the Government to take the necessary measures, as a matter of the utmost urgency to bring an immediate end to these practices which constitute a serious violation of the Convention and to re-establish a climate of legal security in which recourse to forced labour does not go unpunished. The Committee recalls that it is vital for appropriate criminal penalties to be imposed in practice on those who exact forced labour, because of the dissuasive nature of these penalties, and it urges the Government to take the necessary measures as a matter of urgency for this purpose.***

*Article 25. Criminal penalties.* 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 incur the penalty of a maximum of six months' imprisonment and/or a fine, without prejudice to criminal legislation laying down more severe penalties. Emphasizing that the penalties laid down in the Labour Code do not constitute an effective deterrent, the Committee asked the Government to specify the penal provisions that prohibit and sanction recourse to forced labour. The Government confirmed in 2011 that the Penal Code of 1940 (as amended up to 2006) does not establish any penalties for persons who impose forced labour. The Government explained that the Bill for the eradication of forced labour, which is under examination in Parliament, provides for effective criminal penalties. ***The Committee trusts that the Government will be in a position to announce in its next report the adoption of the Act for the eradication of forced labour and that the latter will establish criminal penalties that constitute an effective deterrent, in accordance with Article 25 of the Convention.***

*Repeal 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 a number of years, the Committee has been asking the Government to repeal or amend 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 criminal penalties, every able-bodied adult person who is not already considered to be making his/her contribution by reason of his/her employment (political representatives, employees 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 concerning the minimum personal contribution, of which sections 18 to 21 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; and
- Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts, which allows work to be exacted from persons in preventive detention (this Ordinance not being on the list of legal texts repealed by Ordinance No. 344 of 15 September 1965 concerning prison labour).

The Government previously indicated that these texts were obsolete and were therefore, *de facto*, repealed. Furthermore, replying to the Committee's request to repeal these texts formally in order to guarantee legal certainty, the Government indicated that legal certainty was not compromised by the lack of any formal repeal of these texts. The Government indicated in its report of June 2011 that the promulgation of the Act for the eradication of forced labour will

provide an answer to the concerns of the Committee with regard to the repeal of Act No. 76-011 concerning the national development effort and its implementing Order, as well as Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts. *The Committee hopes that, on the occasion of the adoption of the Act for the eradication of forced labour, the legal texts to which it has been referring for many years, and which the Government indicates are obsolete and, de facto, repealed, will finally be repealed formally.*

## Ethiopia

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)**

*Article 1(a) of the Convention. Penal sanctions for violation of provisions restricting political freedoms.* The Committee previously noted that the following sections of the Criminal Code provide for sanctions of imprisonment which involve an obligation to perform labour (by virtue of section 111(1)) in circumstances covered by the Convention:

- section 486(a): inciting the public through false rumours;
- section 487(a): seditious demonstrations: making, uttering, distributing or crying out seditious or threatening remarks or displaying images of a seditious or threatening nature in any public place or meeting; and
- sections 482(2) and 484(2): punishment of ringleaders, organizers or commanders of forbidden societies, meetings and assemblies.

Following the Committee's request to provide information on the application in practice of the abovementioned sections, the Government indicates in its report that peaceful expression of views or of opposition to the established political, social or economic system are not considered a crime in Ethiopia. The Government further states that the abovementioned provisions are designed and applied observing the protection of the constitutional provision on freedom of expression, thought and opinion.

The Committee furthermore takes note of the adoption of the Anti-Terrorism Proclamation No. 652/2009 in August 2009. Section 3 defines terrorist acts and section 6 provides that anyone who "publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism is punishable with rigorous imprisonment from ten to 20 years".

The Committee notes that, during the discussion by the United Nations Human Rights Council of the Universal Periodic Review of Ethiopia in December 2009, concern was expressed about Anti-Terrorism Proclamation No. 652/2009 which, due to its broad definition of terrorism had led to abusive restrictions on the press (A/HRC/13/17, 4 January 2010). The Government accepted "to take further measures to ensure that any efforts to counter terrorism are carried out in full compliance with its human rights obligations, including respect for due process and freedom of expression" (paragraph 91).

The Committee observes that, on 2 February 2012, UN human rights experts, including the UN Special Rapporteur on freedom of expression, expressed their dismay at the continuing abuse of anti-terrorism legislation to curb freedom of expression in Ethiopia. The Committee notes with *concern* that under Anti-Terrorism Proclamation No. 652/2009 journalists and opposition politicians have recently been given sentences ranging from 11 years to life imprisonment and numerous defendants are scheduled to appear on similar charges before the Court.

The Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour, including compulsory prison labour, as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee points out 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. The Committee also recalls that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to or call for violent means to these ends. The Committee would also like to point out that, if counter-terrorism legislation responds to the legitimate need to protect the security of the public against the use of violence, it can nevertheless become a means of political coercion and a means of punishing the peaceful exercise of civil rights and liberties, such as freedom of expression and the right to organize. The Convention protects these rights and liberties against repression by means of sanctions involving compulsory work, and the limits which may be imposed on them by law need to be properly addressed.

*Observing the broad scope of application in practice of Anti-Terrorism Proclamation No. 652/2009, the Committee urges the Government to take the necessary measures to limit its scope of application and ensure that no sanctions involving compulsory labour can be imposed on those holding or expressing political views or views ideologically opposed to the established political, social or economic system under this Proclamation. It requests the Government to provide information in its next report on the measures taken to bring its legislation and practice into conformity with the Convention in this respect.*

*In the light of the above considerations, the Committee again requests the Government to provide, in its next report, information on the application in practice of the abovementioned sections 482(2), 484(2), 486(a) and 487(a) of the Criminal Code, including copies of any court decisions defining or illustrating their scope, so as to enable the Committee to ascertain whether they are applied in a manner which is in conformity with the Convention.*

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

## Germany

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1956)**

*Articles 1(1), 2(1) and 2(2)(c) of the Convention. Work of prisoners for private enterprises.* In comments made for a number of years, the Committee referred to the situation of prisoners in the country who, in law and practice, are obliged to work, without their consent, in workshops run by private enterprises within state prisons, in conditions not comparable to those found in the free labour market. The Committee recalled that work by prisoners for private enterprises can be held compatible with the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves voluntarily, without being subjected to pressure or the menace of any penalty, by giving their formal, free and informed consent to work for private enterprises. In such a situation, work of prisoners for private parties would not come under the scope of the Convention, since no compulsion is involved. Moreover, the Committee has considered that, in the prison context, the most reliable indicator of the voluntariness of labour is that the work is performed under conditions which approximate a free labour relationship, including wages, social security and occupational safety and health. In this connection, the Committee previously noted that the requirement of the prisoner's formal consent to be employed in a workshop run by a private enterprise, laid down in section 41(3) of the Act on the execution of sentences of 1976, had been suspended by the Second Act to improve the budget structure, of 22 December 1981. It therefore requested that measures be taken to ensure that formal, free and informed consent is required for the work of prisoners in private enterprise workshops inside prison premises.

The Committee notes the information in the Government's report that in September 2011, ten federal states (Länder) (Brandenburg, Berlin, Bremen, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Schleswig-Holstein, Saarland, Saxony and Thuringia) presented a common model Penal Enforcement Bill, and that this model does not require a prisoner to work. The Committee welcomes this initiative and notes that section 22(1) of the model Penal Enforcement Bill states that work shall be assigned to prisoners upon their request or with their consent. The Committee notes, however, the Government's statement that it is unsure of the extent to which this particular aspect of the model legislation will be followed by legislators in the various Länder. The Committee further notes the Government's indication that as of 2010, 60.19 per cent of prisoners were employed and that 14.94 per cent of all prisoners were employed with private enterprises (ranging from below 1 per cent to 22.6 per cent in the respective Länder). The Government states that the employment of prisoners contributes to their social rehabilitation and that prisoners are in need of the wages provided in order to meet maintenance payments, pay debts and purchase items for their personal use. Additionally, the Committee notes the Government's reiteration that there continues to be a job shortage in prisons and that prison authorities therefore welcome jobs made available by private enterprises. *Taking due note of the information provided by the Government and with reference to paragraphs 278 and 279 of the 2012 General Survey on the fundamental Conventions concerning rights at work, the Committee urges the Government to take the necessary measures to encourage the enactment of the model Penal Enforcement Bill in the ten Länder concerned, to ensure that work may only be performed by prisoners in private enterprise workshops with their formal and informed consent, and that such consent is free from the menace of any penalty and authenticated by the conditions of work approximating a free labour relationship. It requests the Government to continue to provide information on developments in this regard, as well as a copies of the relevant legislation adopted in each Land pursuant to this model Bill. In addition, the Committee trusts that similar measures will soon be taken in the remaining six Länder to grant prisoners working for private enterprises within prison workshops a legal status and conditions of employment that are compatible with this Convention. It requests the Government to provide information on the measures taken or envisaged in this regard, in its next report.*

## 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.

The Government indicates 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.***

2. 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.***

## Guatemala

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1959)***

The Committee notes the Government's report as well as the observations made by the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) on the application of the Convention, which were received on 1 September 2012 and sent to the Government on 24 September 2012.

*Article 1(a), (c) and (d) of the Convention. Penal sanctions involving compulsory labour imposed for expressing opposition to the established economic and social order, for breaches of labour discipline and for participation in strikes.* In its previous comments, the Committee requested the Government to take the appropriate measures to amend sections 419, 390(2) and 430 of the Penal Code, given that, under these provisions, prison sentences involving compulsory labour (under section 47 of the Penal Code) can be imposed, in breach of the Convention, as a means of labour discipline or for participation in a strike. Under section 419 of the Penal Code, "any public servant or employee who fails or refuses to carry out, or delays carrying out, any duty pertaining to his position or office, shall be punished with imprisonment of from one to three years"; according to section 390(2), "anyone committing an act intended to paralyze or disrupt an enterprise that contributes to the economic development of the country shall be punished with imprisonment of from one to five years"; and finally, section 430 stipulates that "public servants, public employees and other employees or members of the staff of public service enterprises who collectively abandon their jobs, work or service, shall be punished with imprisonment of from six months to two years. The penalties shall be doubled where such stoppage harms the public interest, and in the case of leaders, promoters or organizers of a collective stoppage". The Committee noted in particular that, although proposals to amend sections 390(2) and 430 of the Penal Code had been drafted with ILO technical assistance by the Tripartite Commission appointed in 2008 to examine the legislative reforms to be made in follow-up to the Committee's comments, no legislative reforms had been made and no bill had been submitted to Congress.

The Committee notes that, according to information submitted by the Government to supplement its report on 5 November 2012, the Government indicates that there is no legislative initiative before Congress to amend the provisions of the Penal Code referred to by the Committee in so far as these provisions do not usually penalize strike action or breaches of labour discipline but rather events that undermine social order – and, in view of their repercussions, also sometimes social peace. The Committee notes that the Government submitted, as an example, a legal ruling based on section 419 of the Penal Code for a case of embezzlement of public funds by a local authority.

The Committee also notes that, in its observations, the MSICG underlines the State's lack of political will to follow through with the necessary legislative reforms. According to the MSICG, the Government has been making formal announcements for many years about the agreements reached in various committees, the drafting of bills, the strengthening of the Tripartite Commission or the recourse to ILO technical assistance, without any of these announcements actually resulting in the adoption of the necessary reforms. The MSICG also refers to other provisions in the Penal Code which give a very wide interpretation of the elements constituting an offence, so that actions considered normal in the context of a social protest, a strike or any other demonstration by civil society could be covered by this definition (sections 256 and 391 of the Penal Code concerning unlawful appropriation of property (*usurpación*) and the definition of terrorism). The trade union believes that any legal provisions that criminalize social protests on the basis of offences that have been very broadly defined, excludes an environment conducive to the exercise of freedom of association; consequently, given the considerable restrictions imposed on the right to strike, exercising freedom of association runs the risk of trade union activities being penalized.

The Committee recalls that it has been making comments on the need to amend sections 419, 390(2) and 430 of the Penal Code for more than 30 years and that the Government has, on several occasions, given the assurance that the penal

legislation will be brought into conformity with the Convention, the last time being in the context of the work of the Tripartite Commission appointed in 2008 to examine the legislative reforms to be made in follow-up to the comments of the Committee. It *regrets* to note that the Government no longer refers to its intention to review the abovementioned provisions and recalls that, in the context of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it is also calling for the amendment of sections 390(2) and 430 of the Penal Code. ***Consequently, the Committee urges the Government to adopt the necessary measures with a view to amending or repealing the provisions in sections 419, 390(2) and 430 of the Penal Code, to ensure that nobody who peacefully participated in a strike or breached labour discipline may be penalized by a prison sentence involving compulsory prison labour. The Committee also requests the Government to send information on the observations made by the MSICG on the criminalization of social protests and trade union activities.***

## 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 has noted 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.***

## 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 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 also noted that, pursuant to section 33(1)(d) of Law-Decree No. 11 (1979) on the execution of prison sentences, convicts have to carry out their work assignments given to them in accordance with their vocational qualifications and abilities. The Government indicated that, in practice, only those convicts who expressly ask for a job may be given work assignments, as the number of job opportunities was lower than the number of convicts applying for a job. The Government indicated that convicts did not have an obligation to work, but work may be assigned to them at their request. In order to get a work assignment, convicts must apply for a particular job by signing an application form, which should be examined by admission and employment committees of penitentiary institutions. The Government stated that prisoners work under conditions approximating a free employment relationship, as regards occupational safety and health, working time and rest periods, paid leave, as well as a wide range of health-care provisions and accident-related benefits within the scope of social security benefits. Noting that the Government was pursuing amendments to Law-Decree No. 11 (1979) on the execution of prison sentences, the Committee expressed the hope that measures would be taken 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 notes the Government's indication that Law-Decree No. 11 (1979) was amended on 1 January 2012. In this regard, the Committee notes with *satisfaction* that these amendments included the insertion of section 44(5) of Law-Decree No. 11 (1979), which states that a prisoner may work at an external business enterprise with the written consent of the prisoner. Section 44(5) further states that if the prisoner revokes his or her consent, the provisions of the Labour Code on termination of employment shall be applicable, with a notice of cancellation of 30 days. The Committee also notes the Government's indication that Regulation No. 6/1996 of the Minister of Justice on the implementation of rules of conviction and preliminary arrest was also amended on 1 January 2012. The Government states that the amendment included the insertion of a new section 19(c), which states that in order to designate a prisoner for work performed at an external business enterprise (pursuant to section 44 of Law-Decree No. 11 (1979)), the prisoner must

make a statement at the time of reception indicating whether he or she consents to being employed in a business enterprise. The Government states that the new rules also state that in case of employment at an external business enterprise, the prisoner may withdraw his or her consent either verbally or in writing.

2. *Labour for public interest performed by convicted persons placed at the disposal of private parties.* The Committee previously noted the Penal Code provisions concerning labour for public interest, which is labour performed as a penal sanction, without deprivation of a person's freedom and without remuneration, and which 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 indication that work performed as labour for public interest must be for the interest of the public 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 the basis of a contract. The Government also indicated 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 Committee expressed the hope that measures would be taken to introduce a requirement of the informed voluntary consent of convicted persons sentenced to community service to work for a private employer.

The Committee notes the Government's statement that section 7(1) of Act II of 2012 (on offences, infringement procedures and an infringement registration system) provides for the possibility to impose community service as a penalty in the case of an offence, if the convicted person states that he or she consents to the imposition of community service work. In this regard, the Committee notes that section 104 of Act II of 2012 states that the refusal of consent by the convicted person precludes the imposition of community service. Moreover, the Government states that a convicted person may also choose to perform community service work instead of the payment of a fine. The Committee further notes the Government's statement that if a convicted person fails to complete his or her community service work, or chooses not to, the penalty will be changed to another type of punishment.

Concerning the consent of persons sentenced to community work working for private enterprises, the Committee notes the Government's indication that convicted persons must provide their consent to the probation officer concerning the forwarding of their relevant personal data to the designated place of work. The Government also states that convicted persons can request that the designated workplace be changed, under certain conditions. ***Taking due note of the information provided by the Government, the Committee requests the Government to provide information on the conditions under which the designated workplace can be changed at the request of the convicted person, and to provide copies of any relevant provisions in this regard.***

## India

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1954)**

*Articles 1(1), 2(1) and 25 of the Convention. Bonded labour. Magnitude of the problem.* The Committee refers to its earlier comments in which it noted the allegations made by the International Trade Union Confederation (ITUC), based on findings from various research studies, that bonded labour in agriculture and in industries like mining, brick kilns, silk and cotton production, and bidi making was likely to be affecting millions of workers across the country. The Committee asked the Government on numerous occasions to undertake a national survey on bonded labour, with the involvement of the social partners and using any statistical methods it considers appropriate.

The Committee takes due note of the Government's views expressed in its report that such a national survey cannot be done by using statistical tools/methodologies adopted for the purpose of collecting data on any issue on a macro basis. The Government considers that the issues relating to the identification of bonded labour are sensitive in nature, which requires that the interviewers have to collect information by interviewing the affected persons about the nature of exploitation and their service conditions, in order to be able to identify whether they fall in the category of bonded labour. The Government reiterates that it had provided grants to state governments for conducting district-level surveys of bonded labour, and that a large number of such surveys had been conducted by the state governments. In this regard, the Committee previously noted a detailed report on the survey conducted in the State of Gujarat, supplied by the Government. On the other hand, the Committee noted that the Government, in cooperation with the ILO, was about to undertake a detailed survey on the vulnerable groups of workers who often become victims of bonded labour.

***While taking due note of the above information, the Committee trusts that the Government will see no difficulty in preparing a nationwide survey on bonded labour, in cooperation with the ILO and with the involvement of the social partners, by compiling the existing data from all the district-level surveys referred to above conducted by all state governments and using any statistical methodology that might be considered appropriate. The Committee hopes that the Government will soon be in a position to provide information on the progress made in this regard.***

### **Vigilance committees**

In its earlier comments, the Committee requested the Government to provide information on the measures taken to ensure the proper functioning and effectiveness of the vigilance committees established under the Bonded Labour System (Abolition) Act, 1976 (BLSA) by all state governments at the district and sub-divisional levels. The Committee notes the

Government's indications in its report that state governments are frequently requested to ensure that the vigilance committees hold their meetings on a regular basis, and that the National Human Rights Commission (NHRC), in collaboration with the Ministry of Labour and Employment, continues to organize sensitization workshops at various places in the states. The Government also indicates that, in the State of Gujarat, a Rural Labour Commissioner has been appointed by the State Government to look after the rehabilitation of bonded labourers in rural areas, and the District Labour Officer (Rural) is working as a member secretary in the vigilance committees of district and local levels. ***The Committee hopes that the Government will continue to describe, in its future reports, the measures taken or envisaged to ensure the proper functioning and effectiveness of the vigilance committees, including copies of the relevant reports, studies and inquiries.***

### **Release and rehabilitation**

The Committee previously noted that the NHRC had been involved in the supervision of the implementation of the BLSA and the Centrally Sponsored Scheme for rehabilitation of bonded labour victims, and that Special Rapporteurs had been appointed by the NHRC in order to make periodic visits to districts to assess the situation at the ground level. The Government indicates in its report that sensitization workshops are being held at various places by the NHRC in collaboration with the Ministry of Labour and Employment by the frontline staff and district functionaries. It also indicates that a special group constituted under the chairmanship of the Union Labour and Employment Secretary has continued to monitor the implementation of the BLSA and has held 21 meetings. The Committee notes with ***interest*** the updated statistics provided by the Government showing the increased numbers of bonded labourers identified and released (294,155) and rehabilitated (274,193) under the Centrally Sponsored Scheme up to 31 March 2012.

***The Committee requests the Government to continue to provide, in its future reports, updated information on the measures taken to effectively implement release and rehabilitation programmes at the state level, including statistical information on the identification, release and rehabilitation of bonded labourers.***

### **Measures to reduce vulnerability of workers to bondage situations**

The Committee previously noted the information regarding the project "Reducing vulnerability to bondage in India through promotion of decent work", which had been prepared by the Ministry of Labour and Employment, with the assistance of the ILO Special Action Programme to Combat Forced Labour (SAP-FL), which has the overall objective to reduce the vulnerability of workers to bondage situations in the brick manufacturing and rice mill sectors in Tamil Nadu by achieving a significant improvement in living and working conditions for women and men workers and their family members. The project established close collaboration between the federal Government, state governments, trade unions and employers of the concerned sectors in order to develop and implement a "convergence-based" approach for the prevention and reduction of vulnerability to bonded labour and for the extension of social protection to migrant workers. While a decision was taken to focus in the first instance on Tamil Nadu, the project was subsequently expanded to other states and is currently being implemented also in the States of Andhra Pradesh, Orissa, Uttar Pradesh, Jharkhand and Chhattisgarh. According to the Government's report, an active social dialogue process is set in motion in the brick manufacturing sector with the involvement of employers, trade unions and officials from labour and factories departments. Thus, in Tamil Nadu, the project has been implemented since 2008 with the active involvement of the Ministry of Labour and Employment, the government of Tamil Nadu, Joint Action Forum of Trade Unions (JAFTU), employers' organizations and civil society.

***The Committee requests the Government to continue to provide, in its future reports, information on the application of the above project in practice, as well as information on other measures taken to reduce workers' vulnerability to bondage, including information on the activities of the Task Force established by the Ministry of Labour and Employment and composed of members of the Ministry of Social Justice and Empowerment, the NHRC and the ILO, in order to consider various issues related to bonded labour, to which reference is made in the report.***

### **Law enforcement. Bonded Labour System (Abolition) Act, 1976 (BLSA)**

With regard to the issue of enforcement of the penalty provisions of the BLSA, the Committee notes the Government's indication in its report that, in Karnataka State, 257 cases have been booked against employers/owners under the Act, of which 156 cases have been disposed and 101 cases are still pending trial. However, while having noted the Government's repeated statement in its reports that the NHRC has been monitoring issues related to prosecutions and convictions under the above Act, the Committee notes from the Government's latest report that no information concerning such prosecutions and convictions has been received by the NHRC from state governments so far. ***The Committee expresses the firm hope that the Government will not fail to provide, in its next report, information concerning the numbers of prosecutions and convictions, as well as specific criminal penalties which have been imposed on the perpetrators convicted under the BLSA, supplying copies of the relevant court decisions.***

### **Child labour**

The Committee notes with ***interest*** from the Government's report that the Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA) was amended in 2011, on the advice of the Technical Advisory Committee on Child Labour, to include two additional occupations where the employment of children is prohibited, thus bringing the total of prohibited occupations and processes under the Act to 18 occupations and 65 processes. It also notes the Government's indication

that it continues to carry out awareness-raising media campaigns (e.g. through electronic media like Doordarshan and All India Radio) on the effective implementation of the CLPRA. The Committee also notes the statistical information provided by the Government as regards inspections, prosecutions and convictions, both at the Central and State level. It notes, in particular, the Government's indication that, during the period between 2009 and 2011, 22,468 prosecutions were launched and 2,896 employers were convicted under the CLPRA. As regards the strengthening of the legislative framework for protection of children, the Government indicates that the Draft Offences against Children Bill, 2006, which is supposed to cover all offences against children, has not yet been finalized. However, a draft Bill covering only sexual offences against children has been formulated and passed by the Rajya Sabha and the Lok Sabha (Upper and Lower House of Parliament) in May 2012.

***The Committee requests the Government to continue to provide information on the application in practice of the CLPRA, including information on the specific penalties imposed in cases of convictions under the Act and supplying sample copies of the relevant court decisions. It also asks the Government to keep the ILO informed of the developments concerning the finalization and the adoption of the Draft Offences against Children Bill referred to above.***

The Committee welcomes the updated information concerning the implementation of the National Child Labour Project (NCLP), which has been implemented by the Government in 266 districts across 20 states. Under the NCLP scheme, child labourers are identified, rescued and enrolled in special schools before being mainstreamed into the formal education system. The Committee notes the comprehensive statistical information supplied by the Government showing details of rehabilitation of child labourers under the NCLP scheme and under the State Child Labour Project scheme in the State of Karnataka, for the period from 2003 to 2012. As regards a convergence project launched by the Government in cooperation with ILO-IPEC (Converging against Child Labour: Support for India's Model), which is aimed at the educational rehabilitation of victims of child labour and the economic rehabilitation of their families, the Committee notes the Government's indication in its report that this project is being implemented in ten districts in five States (Bihar, Jharkhand, Madhya Pradesh, Gujarat and Orissa). The Project also seeks to develop strategies for migrant and trafficked children to re-integrate them with their families and to provide them with educational benefits. The Government indicates that the Ministry of Labour and Employment is taking various pro-active measures towards convergence between the schemes of different Ministries: (i) Ministry of Women and Child Development (for supplementing its efforts in providing food and shelter to the children withdrawn from work through their schemes of shelter homes, etc.); (ii) Ministry of Human Resources Development (for providing mid-day meals to the NCLP school children, teachers' training, supply of books, etc., and mainstreaming of NCLP children into the formal education system); (iii) Ministries of Rural Development, Urban Housing and Poverty Alleviation (for covering these children under their various income and employment generation schemes for their economic rehabilitation). ***The Committee requests the Government to continue to provide information on the practical implementation of the above projects and the results obtained.***

The Committee refers to its earlier comments in which it noted a communication dated 16 March 2010, received from the Dakshini Rajasthan Majdoor Union (DRMU), which contained allegations concerning the situation of migrant workers, especially children, who are subject to compulsory labour practices in cotton production in India, particularly in the states of Gujarat, Andhra Pradesh, Maharashtra and Tamil Nadu. The Union alleged that, through the compilation of surveys of India's major cotton producing states, it found that over 400,000 children are working in that industry alone. According to the allegations, migrant workers, particularly children are sought for these jobs especially because they can be paid rates lower than those required by minimum wages laws; there are many cases in which the children are not paid at all if poor working conditions or any other situation had compelled them to return to their villages before the end of the season. According to the DRMU, in most cases of child labour on cotton-seed farms, the children have been persuaded to market their labour by their friends and their families, who make the ultimate decision to send them for work; cotton field labourers work an average of nine to 13 hours per day, and most of them are never paid overtime for their work; their working and living conditions are visibly poor. The DRMU considered that measures to protect children and migrant workers in cotton production are not sufficient and, even if statistical data decreased in some areas, the practice continues to be common and widespread.

The Committee notes the comprehensive information provided by the Government in reply to the above allegations, and in particular, the information on various legislative, rescue and rehabilitation measures, as well as social protection, poverty alleviation and employment generation schemes implemented within the framework of the National Policy on Child Labour and in pursuance of the NCLP and other projects adopted at the national and state levels referred to above. The Committee notes the Government's indication that manufacturing of cotton is not banned under the CLPRA, but is covered by the regulation part of the Act (Part III), which deals with the regulation of conditions of work of children. The Government also indicates that, with regard to the DRMU's allegations, the governments of Tamil Nadu and Gujarat have informed that no complaints have been received regarding children subjected to compulsory labour practices in cotton-seed production farms in the districts concerned. However, an Integrated Child Protection Programme was launched in 2009 for a period of five years by the government of Tamil Nadu in cooperation with UNICEF with specific focus on child labour and for protecting the rights of children in cotton seed/cotton farming communities. The objectives of the programme include, inter alia, strengthening of child protection structures at district and Panchayat (village council) level, making available quality education for children of 6–14 years of age, enhancing access to service providers and social

protection schemes for vulnerable families, and making available to all children essential preventive and promotive health and nutrition care services. The government of Gujarat has indicated that, as soon as any complaint is received, appropriate steps will be taken under the law by the Officers of the Labour Department and prosecutions could be launched against the owner of a cotton seed farm. The government of Karnataka has indicated that two projects have been launched at the District level in cooperation with UNICEF to rehabilitate children engaged in cotton seed farming, and that 846 child labourers from cotton fields have been rehabilitated so far.

***While noting this information, the Committee requests the Government to provide, in its next report, information on the labour protection and rehabilitation measures taken to prevent children working in cotton production from engaging in hazardous work in Gujarat, Andhra Pradesh, Maharashtra and other states concerned, including statistics showing the numbers of child labourers rescued and rehabilitated and indicating whether prosecutions have been launched against perpetrators and the penalties imposed.***

### **Prostitution and commercial sexual exploitation**

The Committee notes with *interest* the comprehensive information provided by the Government concerning the implementation of the Ujjawala federal scheme on prevention of trafficking and rescue, rehabilitation and reintegration of victims of trafficking and commercial sexual exploitation. The Committee notes, in particular, that the Ministry of Women and Child Development has sanctioned 188 projects in 19 states under the scheme and that grants for setting up 96 protective and rehabilitation homes, with the capacity to accommodate 4,350 victims, have been given by the Government under the rehabilitation component of the scheme. The Committee also notes the Government's indications concerning the work of the Central Advisory Committee (CAC) for preventing and combating trafficking of women and children for purposes of commercial sexual exploitation, which has been constituted by the Ministry of Women and Child Development with the participation of several other central ministries and which holds regular meetings at three month intervals. ***The Committee requests the Government to continue to provide, in its future reports, information on the implementation and impact of the Ujjawala federal scheme, as well as information about the work of the CAC, including any official reports assessing the effectiveness of its work and its impact in practice on combating trafficking in women and children for purposes of sexual exploitation.***

Referring to its earlier comments, the Committee notes the Government's indication in its report that the Immoral Traffic Prevention Bill, 2006, which has been drafted to amend the Immoral Traffic (Prevention) Act, 1956 (ITPA), with a view to widening its scope and providing for more stringent punishments for trafficking in persons, including children, is still under consideration. ***The Committee reiterates its hope that the Bill amending the ITPA will soon be adopted and that the Government will supply a copy of the new legislation, as soon as it is promulgated.***

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

## **Indonesia**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1950)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. Law enforcement.* The Committee previously requested information on the judicial proceedings instituted under Law No. 21/2007 on combating trafficking in persons. It also requested information on the activities of the Task Force to Prevent and Address the Criminal Act of Trafficking in Persons (Task Force), established pursuant to Presidential Decree No. 69/2008.

The Committee notes the Government's statement that, in practice, Law No. 21/2007 has been strictly applied, and notes the Supreme Court Decision No. 2090 K/Pid.Sus/2009, submitted with the Government's report, on its application. The Committee also notes the Government's indication in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182) that in 2011 the police handled cases of trafficking involving 146 adults and 68 children. The Government indicates that 164 trafficking offenders were identified, and 91 of the cases were successfully prosecuted. The Committee further notes that, pursuant to section 4 of Presidential Decree No. 69/2008, the Task Force is responsible for coordinating efforts to prevent and address trafficking in persons, as well as monitoring the progress of law enforcement in this regard. Additionally, concerning enforcement efforts, the Committee notes the Government's indication that it has developed a model for the prevention of trafficking and has provided training to officials on this subject.

The Committee notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 27 July 2012, expressed concern at the gaps in the enforcement of Law No. 21/2007 and on the low number of persons convicted and punished for trafficking (CEDAW/C/IDN/CO/6-7, paragraph 29). ***The Committee urges the Government to strengthen its efforts to prevent, suppress and combat trafficking in persons, and to continue to provide information on the measures taken in this regard, including by the Task Force. It requests the Government to provide information on the measures taken to effectively enforce Act No. 21/2007 as well as on the results achieved, particularly the number of investigations, prosecutions and convictions. Moreover, recalling 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 requests the Government to provide information on the specific penalties imposed on persons convicted under Act No. 21/2007, in its next report.***

2. *Protection and reintegration of victims.* In its previous comments, the Committee noted that the Task Force had established an integrated service centre for empowering women and child victims of trafficking. The Committee notes that, pursuant to section 4 of Presidential Decree No. 69/2008, the Task Force's responsibilities include monitoring the progress of the implementation of measures taken for the protection of victims, particularly for their rehabilitation, repatriation and social reintegration. Sections 12 and 13 of the Decree establish provincial and district/municipal task forces, to coordinate with the National Task Force. In this regard, the Committee notes the indication in the Government's report that it has established provincial task forces in 21 provinces and district task forces in 72 districts/cities. The Government also indicates that measures have been taken to provide a single identification number to each citizen to prevent the falsification of documents. Moreover, the Government indicates that it has coordinated with relevant agencies and NGOs on the dissemination of information and advocacy concerning trafficking in persons.

The Committee further notes the Government's statement in its report submitted to the Human Rights Committee of 19 March 2012 that the Integrated Service Unit provides integrated activities and services for victims of trafficking and violence (CCPR/C/IDN/1, paragraph 119). The Government indicates that the Standards for Minimum Services for this Unit were launched in August 2010, which includes requiring each district/municipality to have at least two community health-care centres particularly designed to prevent and respond to violence against women and children (CCPR/C/IDN/1, paragraph 41). The Government further indicates in this report, that between March 2005 and June 2010, 3,642 trafficking victims were identified and assisted, including 3,298 female victims (CCPR/C/IDN/1, paragraph 123). ***The Committee requests the Government to pursue its efforts to provide appropriate protection and assistance to victims of trafficking with a view to facilitating their subsequent reintegration into society. It also requests the Government to continue to provide information on the specific measures taken in this regard, as well as information on the number of persons benefiting from these services.***

*Articles 1(1), 2(1) and 25. Vulnerability of migrant workers to conditions of forced labour.* 1. *Law enforcement and monitoring.* The Committee previously noted that the Government was taking measures to improve the protection of Indonesian migrant workers against forced labour exploitation. These included the provision of training to migrant workers, services provided to migrant workers in Indonesian diplomatic missions overseas and the adoption of Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers in Foreign Countries, Regulation PER-07/MEN/V/2010 on Insurance for Indonesian Migrant Workers, and Regulation PER 03/KA/II/2010 on the Standard of Services for the Protection of Migrant Workers.

The Committee notes the Government's statement that it continues to provide information to potential migrants on working abroad and on their rights as migrant workers. It also states that the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) has developed a series of best practices to prevent the trafficking of Indonesian migrant workers. The Government further indicates that task forces for the prevention of non-procedural departures of migrant workers have been established in 14 border areas and that the registration of prospective workers is done both online and at the district offices of the Department of Manpower. Concerning the application of Law No. 39 of 2004, the Government indicates that both the BNP2TKI and the Ministry of Manpower and Transmigration (MoMT) conduct direct monitoring of private recruitment agencies with a view to preventing exploitation. The Government also indicates that the BNP2TKI takes measures to contact the relevant private recruitment agencies concerning violations, and if the problem is not resolved, the BNP2TKI recommends to the MoMT that sanctions should be imposed on the company. Moreover, the Government indicates that it has issued a Ministerial Decree on placement fees payable by migrant workers, to protect migrant workers from illegal financing practices.

However, the Committee notes the Government's statement in its report to the CEDAW of 7 January 2011 that Indonesian migrant workers experience a lot of human rights abuses, including forced labour, and that many migrant workers are also victims of human trafficking (CEDAW/C/IDN/6-7, paragraphs 37–38). The Committee also notes that the CEDAW, in its concluding observations of 27 July 2012, welcomed the monitoring of recruitment agencies, but also reiterated its deep concern about the persistence of violence, abuse and exploitation experienced by female migrant workers in the host countries and at the hands of the recruitment agencies that facilitate their placement (CEDAW/C/IDN/CO/6-7/R.1, paragraph 43).

The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour, and to continue to provide information on measures taken in this regard. The Committee also requests the Government to pursue its efforts to monitor recruitment agencies, including through the effective application of Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers. In this regard, it requests the Government to provide, in its next report, information on the application of Law No. 39/2004 in practice, particularly the number of violations reported, investigations, prosecutions and the specific penalties applied.***

2. *International cooperation.* The Committee previously noted the Government's indication that moratoriums had been established on sending domestic workers to Jordan, Malaysia and Kuwait. The Government indicated that a

letter of intent had been signed with the Government of Malaysia to stipulate that Indonesian domestic workers had the right to retain their passports while in Malaysia, were entitled to one rest day a week, and would have wages commensurate with the market.

The Committee notes the Government's statement that a moratorium on sending workers to Saudi Arabia was imposed in 2010, and that it is pursuing MoUs with Saudi Arabia and Kuwait. The Government indicates that it plans to establish legal attachés in Saudi Arabia and Malaysia with a view to providing protection to Indonesian workers in these countries. The Committee also notes that the Government has collaborated with the ILO to implement the Combating Forced Labour and Trafficking of Indonesian Migrant Workers Project, which aims to strengthen the protection of migrant workers against trafficking and forced labour practices as well as empower them financially in order to provide alternatives to hazardous overseas labour conditions and migration practices. ***The Committee requests the Government to continue to provide information on international cooperation efforts undertaken to support migrant workers in destination countries, including measures specifically tailored to the difficult circumstances faced by such workers to prevent and respond to cases of abuse. The Committee also requests the Government to indicate, in its next report, whether there are plans to include guarantees similar to those contained in the MoU with the Government of Malaysia in bilateral agreements with other countries, as well as information on the implementation of such agreements in practice.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)**

*Article 1(a) of the Convention. Use of compulsory labour as a punishment for expressing views opposed to the established political, social or economic system.* 1. *Penal Code.* In its previous comments, the Committee noted that, pursuant to sections 14 and 19 of the Criminal Code and sections 57(1) and 59(2) of the Prisons Regulations, sentences of imprisonment involve compulsory prison labour. The Committee also noted that sections 154 and 155 of the Criminal Code establish a penalty of imprisonment for up to seven years and four-and-a-half years, respectively, for a person who publicly gives expression to feelings of hostility, hatred or contempt against the Government (section 154) or who disseminates, openly demonstrates or puts up a writing containing such feelings, with the intent to give publicity to the contents or to enhance the publicity thereof (section 155). However, it noted that the Constitutional Court, in its ruling on Case No. 6/PUU-V/2007, found sections 154 and 155 of the Criminal Code to be contrary to the Constitution of 1945. The Committee further noted that, in ruling No. 013-022/PUU-IV/2006, the Constitutional Court found that it was inappropriate for Indonesia to maintain sections 134, 136bis and 137 of the Criminal Code (respecting deliberate insults against the President or the Vice-President), since they negate the principle of equality before the law, diminish freedom of expression and opinion, freedom of information and the principle of legal certainty. The Constitutional Court stated that the new draft text of the Criminal Code must not include similar provisions.

The Committee notes the Government's statement that it is in the process of amending the Criminal Code, and that these amendments have been included as a priority in the National Legislation Programme 2010–14, to be addressed by the House of Representatives. The Government states that it will take the Committee's comments into consideration during the formulation of this draft. ***The Committee therefore once again requests the Government to take into account the above rulings of the Constitutional Court, as well as the comments of the Committee, in the context of the elaboration of amendments to the Criminal Code, to ensure that no prison sentence entailing compulsory labour can be imposed on persons who express certain political views or opposition to the established political, social or economic system. It expresses the firm hope that the amendments to the Criminal Code will be elaborated and adopted in the near future, and requests the Government to provide a copy, once adopted.***

2. *Law No. 27 of 1999 on the Revision of the Criminal Code.* In its earlier comments, the Committee noted that under section 107(a), (d) and (e) of Law No. 27 of 1999 on the Revision of the Criminal Code (in relation to crimes against state security), sentences of imprisonment may be imposed upon any person who disseminates or develops the teachings of "Communism/Marxism–Leninism" orally, in writing or through any media, or establishes an organization based on such teachings, or establishes relations with such an organization, with a view to replacing *Pancasila* as the State's foundation. In this regard, the Government confirmed that any person who jeopardizes national stability may be punished with a sentence of imprisonment, which involves the obligation to work. The Committee expressed the hope that Law No. 27 of 1999 would be amended in the near future.

The Committee notes the Government's statement that Law No. 27 of 1999 cannot be amended due to the mandate stated in Law No. I/MPR/2003, on the status of legislative provisions. Section 2 of Law No. I/MPR/2003 states that Decree No. XXV/MPRS/1966 (which relates to the dissolution of the Communist Party of Indonesia, the prohibition of the Indonesian Communist Party and the prohibition of activities to disseminate and develop a Communist/Marxist–Leninist ideology or doctrine) shall remain valid, and shall be enforced with fairness and respect for the law. In this regard, the Committee recalls that *Article 1(a)* of the Convention prohibits all recourse to forced or compulsory labour, including compulsory prison labour, as a means of political coercion or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention includes certain activities aiming to bring about fundamental changes in state institutions, as long as such activities do not resort to or call for violent means to these ends. ***Recalling that it has been raising this issue for more than a decade, the Committee urges the Government to take the necessary measures to bring section 107(a), (d) and (e) of Law No. 27 of 1999 into conformity with the Convention, 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. It encourages the Government to pursue an examination of these provisions within the ongoing revision of the Criminal Code, and to provide information on measures taken in this regard, in its next report.*

3. *Law No. 9/1998 on freedom of expression in public.* The Committee previously noted that Law No. 9/1998 on freedom of expression in public imposes certain restrictions on the expression of ideas in public during public gatherings, demonstrations, parades, etc., and that sections 15, 16 and 17 of the Law provide for the enforcement of those restrictions with penal sanctions “in accordance with the applicable legislation”. The Committee requested the Government to clarify the sanctions applicable in cases of non-compliance with sections 15, 16 and 17 of Law No. 9/1998.

The Committee notes the Government’s statement that Law No. 9/1998 is implemented in line with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Government states that, pursuant to section 17 of the Law, persons who violate section 16 (concerning the public expression of opinion in contravention of the applicable legislation) shall be punished in accordance with the criminal legislation in force, with an additional one third punishment. Moreover, the Committee notes the Government’s statement in its report submitted to the Human Rights Committee on 12 March 2012 that Law No. 9/1998 provides some limitations on expression, including that notification must be submitted to the police three days before certain activities (such as the expression of opinions in public or activities such as rallies or demonstrations), and that pursuant to section 15, the act of expressing public opinion can be disbanded if it fails to meet this requirement (CCPR/C/IDN/1, paragraph 68). ***The Committee requests the Government to provide information on the application in practice of sections 15, 16 and 17 of Law No. 9/1998, including the number and nature of offences, particularly relating to the cases where sentences of imprisonment have been imposed, in its next report.***

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

## Jamaica

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1962)***

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Legislation and policy.* The Committee earlier noted the adoption of the Trafficking in Persons (Prevention, Suppression and Punishment) Act, 2007 and requested information on its implementation in practice. On the basis of the information provided by the Government in its latest report, the Committee notes the legislation, measures and procedures for the implementation of the Trafficking in Persons Act. The Committee takes note of the activities of the National Task Force Against Trafficking in Persons (NATFATIP) responsible for the implementation of the national action plan to combat trafficking in persons. Its core emphasis is the prevention and suppression of trafficking in persons, the provision of protection and assistance to victims of human trafficking and the strengthening of prosecution policies. To address these respective areas three subcommittees have been established.

*Prevention.* The Committee notes the preventive measures undertaken by the Government, which have included the provision of training programmes for police, security officers, social workers and other relevant authorities; the establishment of a trafficking in persons unit in the Jamaica Constabulary Force responsible for enhanced data collection; the monitoring of immigration and emigration patterns; public awareness-raising activities; the establishment of an Inter-Ministerial Work Permit Committee to critically examine work permit applications and the continuous monitoring of expatriate labour across the country.

*Protection and assistance to victims.* The Committee notes the social services made available for victims of trafficking, which include: shelter; translation assistance; medical attention; psycho-social care; reintegration support; and legal representation.

*Prosecution.* The Committee notes the establishment of specific prosecution mechanisms for trafficking in persons; the exchange of information to facilitate prosecution; and the strengthened cooperation with regional and international organizations. Furthermore, the Government states that since 2007, eight suspected cases of trafficking in persons have been investigated, yet the police have encountered problems pursuing investigations as some suspected victims have refused to cooperate.

The Committee notes the information on measures taken by the Government to combat trafficking in persons and protect victims of trafficking. However, it also takes note of the concluding observations of the United Nations Human Rights Committee concerning Jamaica expressing concern at the prevalence of trafficking in persons for sexual exploitation and forced labour and being particularly concerned at the low level of investigations, prosecutions and convictions in this area, and at the lack of prevention and protection mechanisms for victims, including rehabilitation schemes (103rd Session, October–November 2011, paragraph 22).

***Referring to its comments made under the Worst Forms of Child Labour Convention, 1999 (No. 182), as regards trafficking, the Committee requests the Government to pursue its efforts to combat trafficking in persons and step up its action to ensure that thorough investigations and robust prosecutions are carried out against persons who commit the offence of trafficking in persons. In this regard, it requests the Government to provide in its next report further***

*information on the application of the 2007 Act in practice, including the number of investigations, prosecutions and penalties imposed. It further requests the Government to indicate the measures taken to provide training to law enforcement officials on the phenomenon of trafficking. The Committee also urges the Government to strengthen its efforts to ensure that victims of trafficking are adequately protected and assisted, as well as to undertake efforts for their recovery and social integration. The Committee requests the Government in this respect to provide statistical information on the various kinds of assistance provided. The Committee further reiterates its request to the Government to provide a copy of the National Action Plan against Trafficking.*

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

### **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 not in conformity 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 2010 report, the Government confirmed that an opinion had been received by the Attorney General's chambers recommending that amendments be made to the Shipping Act, 1998, to bring it into conformity with the Convention. The Government also stated at the time that the Office of the Parliamentary Council is to be instructed to make the amendments to the relevant legislation accordingly.

The Committee notes the Government's indication in its latest report that amendments will be made to the Shipping Act, 1998 after a general review and updating of the legislation. *Observing that the Government has been referring to amendments to the Shipping Act, 1998, since 2004, the Committee urges the Government to take the necessary measures to bring the legislation into conformity with the Convention, for example, by limiting the scope of the relevant provisions of the Shipping Act, 1998, as indicated above. The Committee hopes that the Government will soon be in a position to report on the progress made in this regard.*

## **Japan**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1932)**

For a number of years, the Committee has been examining the issues of wartime industrial forced labour and sexual slavery (so-called "comfort women") during the Second World War. It has referred in this regard to its earlier considerations and conclusions concerning the limits of its mandate in respect of these historical breaches of the Convention. On numerous occasions, the Committee expressed the hope that, in making further efforts to seek reconciliation with the victims, the Government would take measures to respond to the claims of the aged surviving victims. The Government was requested to continue to provide information about any developments in this regard.

The Committee notes the information provided by the Government in its reports received on 5 September and 1 October 2012, as well as in the Government's communications received on 28 February and 14 and 16 November 2011.

The Committee notes communications received in 2011 and 2012 from the following workers' organizations:

- All-Japan Shipbuilding & Engineering Union (AJSEU) (dated 24 and 28 August 2011 and 17 August 2012);
- Federation of Korean Trade Unions (FKTU) and Korean Confederation of Trade Unions (KCTU) (dated 27 August and 5 October 2011 and 28 August 2012);
- National Confederation of Trade Unions (ZENROREN) (dated 21 September 2012).

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 most of these communications received on 5 September and 14 November 2012.

The Committee notes that, in the above communications, the workers' organizations express concern about the position of the Government with regard to the issue of "comfort women" and call on the Government to take urgent measures to resolve the issue. Some of the above communications deny the role of the Asian Women's Fund (AWF) in restoring the victims' dignity, since the surviving victims largely rejected the compensation offered by the Fund and expressed their opposition to its activities. Some of the workers' organizations also express their scepticism about the follow-up activities of the AWF being implemented by the Government. They also call on the Government to review national laws with a view to removing existing obstacles to obtaining full reparations before Japanese courts and to settle the wartime forced labour issue.

Some of the above communications refer to a decision of the Constitutional Court of the Republic of Korea passed on 30 August 2011 on the constitutional appeal filed by 109 surviving victims of military sexual slavery, in which the Constitutional Court urged the Korean Government to take proactive action to restore the violated human rights of the victims. In compliance with this decision, the Korean Government proposed bilateral talks to settle the issue with the Government of Japan. Following the above ruling of the Constitutional Court, the Korean Supreme Court ordered the lower courts of the Republic of Korea to retry two cases of wartime industrial forced labour on 24 May 2012.

The communications from the workers' organizations continue to refer to the issue of military sexual slavery as it had been taken up by the United Nations bodies, in particular, 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 and the Republic of Korea. Thus, since March 2008 and up to August 2012, 36 Japanese city councils and 54 Korean city 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 has taken due note of the Government's repeated statement in its reports that it remains committed to the position expressed in the August 1993 statement of the then Chief Cabinet Secretary, Mr 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. The Government reiterates that this statement embodies its official position on this matter which remains unchanged. It recalls that the Government of Japan has since expressed its sincere apologies and remorse on many occasions, based on the then Prime Minister Tomiichi Murayama's statement in August 1995. The Government also refers once again to a letter expressing apologies and remorse, which was sent by the Prime Minister, on behalf of the Government of Japan, directly to each former "comfort woman", in connection with the activities of the AWF.

As regards the non-legal measures to respond to the claims of the surviving victims of wartime military sexual slavery and to meet their expectations, the Government refers once again to the activities of the AWF, which was established in 1995 in order to extend atonement from the Government and people of Japan to the former "comfort women" and was dissolved in 2007, after it had completed its objectives. The Committee has noted the Government's indication that it provided all possible assistance for the AWF, including bearing its total operational costs, fully supporting its fund-raising activities and providing the necessary funds to implement its activities. In this regard, the Government once again indicates that it contributed approximately US\$60 million from the national budget and Japanese people donated approximately US\$7 million to the AWF. However, the Committee recalls that it has considered in its earlier observations that the rejection by the majority of former "comfort women" of monies from the AWF, because it was not seen as compensation from the Government, 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 that the Government repeats its previous statement that it will continue to implement follow-up activities of the AWF. The Government reiterates 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 from the Government's report, and from a communication received in February 2011, that Mr Yutaka Banno, then State Secretary for Foreign Affairs, and Ms Makiko Kikuta, then Parliamentary Vice-Minister for Foreign Affairs, met with former "comfort women" in November 2010 and January 2011 in Japan and explained in person the Government's views and listened to their current living circumstances, past experiences, wishes and personal feelings. The Government also indicates that, in the light of the meetings, it has increased the budget of the visiting care activities and group counselling activities and will continue to implement follow-up activities of the AWF, while continuing its efforts to grasp the needs of former "comfort women".

Finally, the Committee notes the Government's indication in its report that, during the period from 1 June 2010 to 31 May 2012, the courts "pronounced" on five cases regarding "conscripted forced labourers" with regard to lawsuits in which the plaintiffs claimed state compensation for damages. The Government indicates that, in all these cases, the plaintiffs' claims for compensation against the Government of Japan have been dismissed by reason that all these cases do not fall under the reasons of final appeals of the Code of Civil Procedure. There were no court decisions regarding the

“comfort women” issue. The Government also indicates that, as of 31 May 2012, there were no cases pending in the Japanese courts concerning the “comfort women” and “conscripted forced labourers” issues.

While observing that representatives of the Government met with the “comfort women” in 2010 and 2011, the Committee notes with *concern* that no concrete outcome has been noted. *The Committee expresses the firm hope that, given the seriousness and long-standing nature of the case, the Government will continue to make further efforts to achieve reconciliation with the victims, and that measures will be taken, without further delay, to respond to the claims being made by the aged surviving victims of wartime industrial forced labour and military sexual slavery. The Committee requests the Government to provide information 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 meetings with former “comfort women” referred to above.*

*Articles 1(1), 2(1) and 25 of the Convention. Industrial Training and Technical Internship Programme.* Referring to its earlier comments, the Committee notes the communications received from the Labour Union of Migrant Workers dated 22 August 2011 and 29 August 2012, which contain information concerning the implementation of the revised Industrial Training and Technical Internship Programme (“Foreign Trainee” Programme), as well as the Government’s response to these communications received on 1 October and 14 November 2012.

The Committee previously noted 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. The Committee also noted that the Training and Technical Internship Programme was revised in July 2010 with a view to strengthening the protection of trainees and technical interns, who had been given a status of residence of “Technical Intern Training” for a maximum period of three years and acquired protection 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 was prohibited, and the suspension period during which organizations found guilty of human rights abuses were not allowed to accept technical interns was extended from three years to five years.

However, according to the allegations contained in the above communications from the Labour Union of Migrant Workers, the conditions of foreign trainees have not improved: they are still forced to work under the menace of deportation, they are not allowed to change their employer and remain vulnerable to employers’ abuses (illegal overtime, violation of industrial safety and health rules, confiscation of trainees’ and interns’ passports by employers, etc.). The Union refers to the statistical information from the JITCO website concerning the death of the foreign trainees and technical interns as a result of work-related accidents and diseases in 2011. It also refers to the information concerning various labour law violations published in reports of some Prefectural Labour Bureaus (of Gifu, Fukui, Aichi and Shimane) related to the Technical Internship Programme. The Union considers that the problems cannot be resolved by superficial change of wording and the programme should be abolished.

In its response to the above communications, the Government reiterates that the Training and Technical Internship Programme explicitly prohibits forced or compulsory labour. The Immigration Bureau and JITCO have been supervising the programme in order to prevent any inappropriate cases from occurring. Moreover, no cases that might fall under the category of forced labour have been recognized in the course of the operation of the programme. In addition, labour standards inspection bodies have been actively implementing supervisory guidance for business operators that employ technical interns and strict actions have been taken when violations of section 5 of the Labour Standards Law (prohibition of the exaction of forced or compulsory labour by employers by means of physical violence, intimidation, confinement or any other unfair restraint on the mental or physical freedom of workers) were observed. As regards, more specifically, cases of serious human rights violations involving inappropriate behaviour toward interns, including violence and taking away passports, etc., the Immigration Bureau has been recognizing “misconduct” of accepting organizations after making the necessary examinations and strictly responding by prohibiting such organizations from accepting trainees/interns for up to five years. The Government indicates that “misconduct” of accepting organizations was recognized for 163 organizations in 2010 and 184 organizations in 2011, including the organizations that failed to pay overtime premium to interns and made them work long overtime hours considerably exceeding the limits stipulated in the labour agreement. Regarding the activities of the labour standard inspection offices in securing appropriate working conditions for technical interns, the Government indicates that, out of 2,748 cases of supervisory guidance provided to implementing organizations in 2011, violations of labour laws and regulations were acknowledged in 2,252 cases, and 23 cases of serious or vicious violations with regard to technical interns have been sent to the public prosecutors’ offices. JITCO has continued to conduct numerous visiting consultations to accepting organizations and companies and has established telephone consultation hotlines in certain native languages. The Government indicates, however, that statistics on the numbers of cases of prosecutions and convictions concerning violations with regard to technical interns are not available.

*While noting this information, the Committee asks the Government to continue to provide information on the various measures taken, both in legislation and in practice, with a view to strengthening the protection of foreign*

*technical interns. Please provide information, in particular, on the measures taken to strengthen the system of supervision against violations through appropriate inspections and monitoring. The Committee also hopes that, in its next report, the Government will be in a position to supply statistics on the numbers of cases of prosecutions and convictions, indicating also the penalties imposed on perpetrators.*

*Trafficking in persons.* The Committee notes with *interest* the information on various measures taken by the Government under the 2009 Action Plan to combat trafficking in persons provided in its report received on 1 October 2012. It notes, in particular, the Government's indications concerning measures taken in the areas of prevention of trafficking in persons (such as the reinforcement of immigration control measures and measures to raise public awareness), protection of victims (including the functioning of the Women's Consulting Offices, improvement in the status of residence of the victims and assistance for the victims' repatriation), prosecution of offenders (including statistics showing the numbers of persons arrested, prosecuted and sentenced for trafficking-related crimes) and cooperation with foreign governments and international organizations.

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 reiterates its view expressed in its earlier communication that victim protection measures should be reinforced and calls again for the implementation of a multifaceted support system encompassing a broad range of measures in accordance with the 2008 recommendations of the United Nations Human Rights Committee. JTUC-RENGO also calls for the strengthening of countermeasures against fraudulent marriages arranged for the purpose of obtaining working visas in Japan, which can result in the imposition of forced labour conditions by the fake marriage brokers. As regards, more particularly, such countermeasures, the Government indicates in its report that the immigration authorities conduct a stricter residence examination and cooperate with the police in order to identify trafficking in persons cases and to protect the victims in accordance with the 2009 Action Plan to combat trafficking in persons.

*The Committee reiterates its hope that the Government will continue to provide, in its future reports, information concerning the implementation of various measures provided for in the 2009 Anti-Trafficking Action Plan, including, in particular, information on the application of criminal sanctions to the perpetrators and 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 a number of 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 previously noted the Government's indication that sections 13–18 of the Chief's Authority Act referred to above had never been enforced and that the Chief's Authority Act would be replaced by the Administrative Authority Act. The Government states in its latest report that the Administrative Authority Bill which is intended to replace the Chief's Authority Act has been published and submitted to Parliament for debate and enactment. It also undertakes to communicate a copy of the new Act, once it is approved.

*The Committee trusts that the Administrative Authority Act, which is intended to replace the Chief's Authority Act, will be adopted in the near future 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.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)**

The Committee notes with *interest* the adoption of the Constitution of Kenya, 2010, which contains provisions relating to the Bill of Rights (Chapter 4), including, in particular, provisions prohibiting slavery, servitude and forced labour (article 30), as well as provisions which guarantee freedom of expression (article 33) and freedom of the media (article 34), the right of peaceful assembly, demonstration and picketing (article 37) and the right to form a political party and to participate in its activities (article 38(1)).

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views. Penal Code and the Public Order Act.* For many years, the Committee has been referring to certain provisions of the Penal Code and the Public Order Act, under which sentences of imprisonment (involving compulsory labour under Rule 86 of the Prison Rules) may be imposed as a punishment for participating in certain meetings and gatherings or the publication, distribution or importation of certain kinds of publications. The Committee has been referring, in particular, to section 5 of the Public Order Act (Cap. 56), under which the police is entitled to control and direct the conduct of public gatherings and has extensive powers to stop or prevent the holding of public gatherings, meetings and processions (section 5 (8)–(10)), contraventions being punishable with imprisonment (sections 5(11) and 17), which involves compulsory labour. The Committee has been also referring to section 53 of the Penal Code, under which printing, publishing, distributing, offering for sale, etc. of any prohibited publication is punishable with

imprisonment; under section 52 of the Penal Code, any publication can be declared a prohibited publication, if it is necessary in the interests of public order, public morality or public health.

The Committee recalls that *Article 1(a)* of the Convention prohibits the use of “any form of forced or compulsory labour”, including compulsory prison labour, as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. Referring to paragraph 303 of its 2012 General Survey on the fundamental Conventions concerning rights at work, the Committee points out 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 fall within the scope of the Convention if they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system, whether the prohibition is imposed by law or by an administrative decision. Such views may be expressed orally or through the press or other communications media or through the exercise of the right of association (including the establishment of political parties or societies) or participation in meetings and demonstrations.

The Committee observes that the scope of the provisions of the Penal Code and the Public Order Act referred to above is not limited to violence or incitement to violence and may lead to the imposition of penalties involving compulsory labour as a punishment of various non-violent actions relating to the expression of views through certain kinds of publications and the participation in public gatherings.

***The Committee therefore expresses the firm hope that the provisions of the Penal Code and the Public Order Act referred to above will be brought into conformity with the Convention (e.g. by limiting their scope to acts of violence or incitement to violence or by replacing sanctions involving compulsory labour with other kinds of sanctions, such as fines) and that the Government will soon be in a position to report on the progress made in this regard.***

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

## 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.* Over a number of years, the Committee had been drawing the Government’s attention to the exclusion of migrant domestic workers from the protection of the Labour Code, and requested the Government to take the necessary measures to adopt a protective framework of employment relations that is specifically tailored to the difficult circumstances faced by this category of workers.

The Committee notes the Government’s indication in its report that certain decrees and ministerial decisions were adopted, which aim to provide domestic workers with more protection, including Decree Law No. 40/1992 and Ministerial Decision No. 617/1992 regulating the rules and procedures for obtaining licenses for the private recruitment agencies supplying domestic workers and similar workers, as well as Ministerial Decision No. 1182/2010, which defines the rights and obligations of each party in the recruitment contract (agency, the employer, the employee).

Regarding the freedom of domestic workers to terminate employment, the Government indicates that the worker should be informed about all the modalities of the recruitment contract before its signature, including the rules of termination of the contract, and that it is on a voluntary basis that the worker agrees to conclude the contract. In case of any dispute between the parties to the contract, they should resort to the Domestic Labour Department and apply Kuwaiti laws on all matters that do not have an explicit text in the contract (section 7(3)).

Furthermore, the Government indicates that under section 13 of Ministerial Decision No. 200/2011, regulating work in the private sector, it is possible to change the work permit for workers living in the country after a stay of one year without interruption, with the consent of the employer.

The Government further enumerates various measures taken to ensure the protection of migrant workers from abusive practices, including the draft Bill on the regulation of the employment of domestic workers; Ministerial Decision No. 194/2010 prohibiting the retention of identity documents of migrant workers in the private sector and in the oil sector; Ministerial Decision No. 103/a of 2012 establishing a telephone line for receiving complaints; the construction in 2007 of a shelter for domestic workers, as well as a new one that could receive around 700 workers. The Government also indicates that during 2011, 89,685 transfers to other employers of domestic workers occurred.

While noting this information, the Committee highlights the importance of taking effective action to ensure that the system of employment of migrant workers, especially migrant domestic workers, does not place the workers concerned in a situation of increased vulnerability, particularly when they are confronted with employment policies such as the visas “sponsorship” system and subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuses. Such practices could turn their employment into situations that could amount to forced labour.

***The Committee therefore expresses once again the firm hope that the domestic workers Bill, referred to above, will be adopted without delay. It also requests the Government to provide information on any practical measures taken to protect migrant domestic workers from abusive practices that could amount to the exaction of forced labour,***

*facilitated particularly by the visa “sponsorship” system, which prevent this category of workers from freely terminating their employment.*

*Articles 1(1), 2(1) and 25. Trafficking in persons.* Referring to its earlier comments, the Committee notes once again the Government’s indication that the Bill on combating trafficking in persons, which is registered under Decree No. 266 of 2008, has yet to be adopted by Parliament. It also notes the Government’s reference to section 185 of the Penal Code under which anyone who brings a person in or out of the country with the intention of selling that person as a slave, or anyone who buys or offers someone for sale, is punishable with five years of imprisonment and a fine.

*The Committee once again expresses the firm hope that the Bill on combating trafficking in persons will be adopted in the near future and that the Government will provide a copy once it has been promulgated. Pending the adoption of the Bill, the Committee once again requests the Government to provide information on the application in practice of section 185 of the Penal Code, to which the Government refers in relation to the punishment of slavery-like practices.*

*Article 25. Penal sanctions for the exaction of forced or compulsory labour.* Over a number of years, the Committee has been drawing the Government’s attention to its national legislation that does not contain any specific provisions under which the illegal exaction of forced or compulsory labour is punishable as a penal offence. It invited the Government to take the necessary measures, for example by introducing a new provision to that effect in the legislation. The Government 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 of 1960) prohibiting public officials or employees from forcing 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/her reputation or property with a view to forcing the victim to do something or to refrain from doing something.

The Committee recalls, that under *Article 25* of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and the penalties imposed by law must be really adequate and strictly enforced. *Noting that the Government’s report contains no information in this regard, the Committee once again requests the Government to take the necessary measures in order to give full effect to Article 25 of the Convention. Pending the adoption of such measures, the Committee requests the Government to provide, in its next report, information on the application of the above penal provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.*

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

### **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) of the Convention. Punishment for expressing political views.* In its earlier comments, the Committee 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.

In its latest report, the Government indicates that the draft law referred to above has not yet been adopted. *The Committee reiterates its hope that the law concerning public meetings and gatherings will be adopted in the near future and that the Government will communicate a copy for the examination by the Committee.*

*Article 1(c) and (d). Disciplinary measures applicable to seafarers.* Over a number of 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 recalled 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 only if such acts endanger the safety of the vessel or the life or health of persons. The Committee observed that sections 11, 12 and 13 of the above Legislative Decree do not appear to limit the application of the penalties to such acts.

The Committee notes the Government’s commitment expressed in the report to bring legislation into conformity with the Convention, and in particular, the Government’s indication that the necessary measures are being taken to amend the abovementioned Decree. *The Committee trusts that the Legislative Decree No. 31 of 1980 will be amended in the near future, 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 amendment, 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.*

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

## **Lebanon**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1977)**

*Articles 1(1) and 2(1) of the Convention. Vulnerability of migrant domestic workers and the exaction of forced labour.* In its previous comments, the Committee noted a series of measures adopted by the Government for domestic

workers, such as the preparation of a guidance manual for this category of workers and the establishment of a formal contract governing their employment relationship.

However, the Committee observes that, in the Compilation prepared by the Office of the High Commissioner for Human Rights, it is indicated that migrant domestic workers remain particularly vulnerable and are specifically excluded from the protection of the Labour Code. A number of reports have confirmed the existence of abuses by employers and recruiting agents, including non-payment or delayed payment of wages, withholding of identity papers, inadequate food and housing, forced confinement to the workplace, prohibition of rest time as well as verbal, physical and sexual abuse.

The Committee also observes that the United Nations Country Team recommended that the Government should pursue its efforts to review its labour legislation with a view to including migrant workers in its scope and that previously, in 2006, the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, had also recommended that the protection of the Labour Code be extended to domestic workers (A/HRC/WG.6/9/LBN/2, November 2010, para. 41).

The Committee also notes the Bill regulating the working conditions of domestic workers, which was attached to the Government's report. According to the Government, the Bill was formulated so as to comply with the provisions of the Domestic Workers Convention, 2011 (No. 189). The Committee observes that the Bill contains provisions on the respective obligations of the employer and the worker, particularly concerning the type of contract to be signed, hours of work and remuneration. With regard to the termination of the contract of employment, the Committee notes that it is now possible for the employee to terminate it at any time with one month's notice. In the event of aggression, failure to pay remuneration for two successive months or work outside the tasks set out in the contract, the employee can terminate the contract of employment without complying with the period of one month's notice. The Committee also notes that the Ministry of Labour is competent to resolve any dispute amicably.

***In view of the situation of vulnerability affecting migrant domestic workers, the Committee requests the Government to take the necessary measures to ensure that the Bill governing the conditions of work of domestic workers is adopted in the very near future. It requests the Government to provide a copy of the definitive text once it has been adopted.***

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

## Liberia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1931)**

*Articles 1(1) and 2(1) of the Convention.* *Forced labour and captivity practices as a consequence of the armed conflict.* Over a number of years, the Committee has been drawing the Government's attention to the situation of forced labour and captivity practices which took place in the south-eastern part of the country in connection with armed conflict, where persons were allegedly held hostage and used as a source of forced and captive labour. It requested the Government to provide information 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 notes the Government's indication that a tripartite delegation was dispatched to the south-eastern counties of Sinoe, Maryland, River Gee and Grand Gedeh to conduct investigations on alleged forced labour and captivity practices. The interviews conducted had confirmed that during the civil war, several warring factions were engaged in the practice of forced labour and sexual violence. Since law and order have been restored, no incidence of forced labour was observed. Furthermore, an international non-governmental organization (Save the Children) has done substantial work in reuniting families since the cessation of hostilities.

Regarding the Liberian Truth and Reconciliation Commission (TRC), the Government indicates that the latter has completed its work recommending, among others, the prosecution of persons accused of gross human rights violations. An Independent National Human Rights Commission has also been established, in this respect. The Committee takes note of the TRC report released in 2009, which provides in-depth information on cases of violations and abuses of human rights collected from the victims of the armed conflicts. It notes that according to the TRC "the armed fighters in Liberia relied to a great extent on those who had been abducted to perform slave labour at the total mercy of their captors. This type of labour was used for both military and civilian tasks and included carrying heavy loads, arms, ammunition and foraging for food, fetching water, doing laundry, cooking and whatever else was needed. While statistics in the report show that men were the larger category of victims for this violation, women, who were abducted for forced labour were compelled to perform work for the fighters of all factions."

***The Committee requests the Government to provide, in its next report, full and detailed information on the measures taken to implement the recommendations of the TRC, in particular with regard to the number of prosecutions of the most serious offenders. In this regard, the Committee asks the Government to provide detailed information on the activities of the recently established Independent National Human Rights Commission.***

*Article 25.* *Application of really adequate and strictly enforced penal sanctions for the exaction of forced labour.* The Committee notes the Government's reference to the National Palaver Hut programme (or peace forums), as form of justice and accountability mechanism, aimed at promoting reconciliation between the communities and seeking the



rehabilitation of, and reparation to, victims of the civil war. The Committee notes also that the TRC report recommends a reparations programme of US\$500 million over a period of 30 years and that all direct victim support programmes must be implemented including memorials, victim support, and the process of prosecution.

*While taking due note of these measures and encouraging this process, as a first step towards the rehabilitation of the victims, the Committee recalls 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 therefore 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.

## Malaysia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1957)**

The Committee notes the communication from the International Trade Union Confederation (ITUC) dated 31 August 2011, as well as the Government's reports dated 15 September 2011 and 8 November 2012.

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Trafficking in persons.* The Committee previously noted the adoption of the Anti-Trafficking in Persons Act, 2007 which, pursuant to sections 12–15, prohibits trafficking in persons and provides for a penalty of imprisonment of up to 20 years. The Committee requested information on the application of the Act in practice.

The Committee notes the ITUC's statement that Malaysia is a destination, and to a lesser extent, a source and transit country for men, women and children subject to trafficking in persons, particularly for forced prostitution and forced labour. The ITUC alleges that prosecution for forced labour trafficking is rare at best, indicating that several NGO's had reported potential labour trafficking cases to the Government, but no arrests or investigations were reported.

The Committee notes the statistical information provided by the Government concerning the application of the Anti-Trafficking in Persons Act. The Government indicates that, as of May 2011, 226 persons had been charged with the offence of trafficking in persons (pursuant to section 12 of the Act), and 98 persons had been charged with trafficking in persons by means of threat or force (pursuant to section 13 of the Act). The Committee also notes the Government's indication that, with regard to trafficking in persons, there have been 355 cases investigated and 339 persons charged, with 253 cases pending trial, 13 persons discharged and 33 persons convicted, although the Committee observes an absence of information on the specific penalties applied to those convicted. The Government further indicates that 844 trafficking victims were issued protection orders (provided to trafficking victims in need of protection, pursuant to section 51 of the Act), and 2,289 persons were issued interim protection orders of 14 days (issued by a magistrate, pursuant to section 44 of the Act, while an investigation takes place). The Committee further notes the information in the Government's report that the National Action Plan on Trafficking in Persons (2010–15) was launched on 30 March 2010. This National Action Plan is composed of nine main goals, including improving the relevant legal framework; implementing integrated action among enforcement agencies; providing victims with protection and rehabilitation services that conform with international standards; combating labour trafficking; and providing training to personnel involved in implementing the Anti-Trafficking in Persons Act. *The Committee urges the Government to pursue its efforts to combat trafficking in persons, including within the framework of the National Action Plan on Trafficking in Persons (2010–15), and to provide information on the specific measures taken in this regard, as well as on the results achieved. It requests the Government to continue to provide information on the application of the Anti-Trafficking in Persons Act in practice, including the number of investigations, prosecutions and convictions. Moreover, recalling 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 requests the Government to provide information on the specific penalties imposed on persons convicted under the Anti-Trafficking in Persons Act.*

2. *Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee notes the statement in the ITUC's communication that some workers who willingly enter Malaysia in search of economic opportunities subsequently encounter forced labour at the hands of employers or informal labour recruiters, including workers from Indonesia, Nepal, India, Thailand, China, the Philippines, Cambodia, Bangladesh, Pakistan and Viet Nam. The ITUC indicates that these migrant workers are employed on plantations and construction sites, in textiles factories, and as domestic workers, and experience restrictions on movement, deceit and fraud in wages, passport confiscation and debt bondage. Regarding domestic workers, the ITUC indicates that conditions for these workers are particularly troubling, and that some domestic workers are not paid for three to six months. Moreover, the ITUC alleges that the Memorandum of Understanding (MoU) between Malaysia and Indonesia covering the employment of Indonesian domestic workers explicitly allows for the confiscation of workers' passports. The ITUC further alleges that the Government has failed to report any criminal prosecutions of employers who subject workers to conditions of forced labour or labour recruiters who use deceptive practices and debt bondage to compel migrant workers into involuntary servitude.

The Committee notes the Government's indication that, in May 2012, it conducted a training for labour inspectors, in collaboration with the ILO Tripartite Action to Protect Migrant Workers from Labour Exploitation Project (the ILO TRIANGLE Project). The Committee also notes the information from the International Organization on Migration (IOM) in a document entitled "Labour Migration from Indonesia" that in June 2009, the Government of Indonesia enacted a moratorium on placing domestic workers in Malaysia. However, this moratorium was lifted following the signature of a new MoU in May 2011 between the Governments of Indonesia and Malaysia (superseding the prior MoU of 2006). This MoU stipulates that Indonesian domestic workers have the right to retain their passports while in Malaysia, shall be entitled to one rest day a week and shall have their wages commensurate with the market. The Committee further notes the information from the IOM, that as of 2009, there were approximately 2.1 million migrant workers in Malaysia. This report states that official estimates indicate that there are approximately 700,000 irregular migrant workers in the country, although other estimates are much higher. This report further indicates that migrant workers in Malaysia may be subject to unpaid wages, passport retention, heavy workloads and confinement or isolation. In addition, the Committee notes that in October 2011, the Government of Cambodia signed a suspension on sending Cambodian domestic workers to Malaysia.

The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. ***The Committee therefore urges the Government to take the necessary measures to ensure that migrant workers, without distinction of nationality or origin, are fully protected from abusive practices and conditions that amount to the exaction of forced labour. The Committee requests the Government to provide information in its next report on measures adopted specifically tailored to the difficult circumstances faced by migrant workers, including measures to prevent and respond to cases of abuse of migrant workers, as well as to ensure that sufficiently effective and dissuasive penalties are applied to persons who subject these workers to conditions of forced labour. The Committee also requests the Government to indicate, in its next report, whether there are plans to include guarantees similar to those contained in the MoU with the Government of Indonesia in bilateral agreements with other countries, as well as information on the implementation of such agreements in practice.***

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

## Mauritania

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1961)***

The Committee notes the reports on the application of the Convention sent by the Government in September 2011 and in 2012, and the observations from the General Confederation of Workers of Mauritania (CGTM), the Free Confederation of Mauritanian Workers (CLTM) and the International Trade Union Confederation (ITUC), which were received on 22 August 2011, 27 August 2012 and 31 August 2012, respectively.

*Articles 1(1), 2(1) and 25 of the Convention. Slavery and slavery-like practices.* In its previous comments, the Committee noted that the Government had taken a number of positive measures which demonstrated the Government's commitment to combat slavery and the vestiges thereof. However, it observed that, despite these measures, victims were unable to assert their rights and it asked the Government to take appropriate measures in this respect. The Committee also underlined the importance of a comprehensive strategy to combat slavery which would make it possible to address this issue in a broad manner. The Committee notes that, since its last observation, the question of the application of the Convention by Mauritania was examined by the Committee on the Application of Standards of the International Labour Conference in June 2010. It also notes the report published in August 2010 by the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences (A/HRC/15/20/Add.2).

*(a) Effective application of the legislation.* The Committee recalls that Act No. 2007/48 of 9 August 2007 criminalizing slavery and punishing slavery-like practices (hereinafter: Act of 2007) defines, criminalizes and penalizes practices similar to slavery and makes a distinction between the crime of slavery and offences relating to slavery. These provisions state, inter alia, that "any person who appropriates the goods, products and earnings resulting from the labour of any person claimed to be a slave or who forcibly takes that person's monies shall be liable to imprisonment ranging from six months to two years and a fine ranging from 50,000 to 200,000 ouguiyas" (section 6). Furthermore, the Walis, Hakems, local chiefs and officers of the criminal investigation police who do not take action with regard to slavery-like practices that are brought to their knowledge shall be liable to imprisonment and a fine (section 12). Lastly, human rights associations are empowered to denounce violations of the Act and to assist victims, with the latter entitled to judicial proceedings that are free of charge (section 15). The Committee noted that the Act had received considerable publicity with a view to promoting an understanding of the criminal nature of slavery. It stressed the need to continue the awareness-raising process in view of the fact that victims seemed unable to assert their rights with regard to the competent authorities and that the Government had been unable to supply information on complaints submitted, investigations undertaken or legal proceedings instituted.

The Committee observes that the ITUC emphasizes in its observations that it is extremely difficult for victims of slavery to overcome cultural and legal obstacles in order to be able to lodge complaints and take legal action against their

masters. The ITUC refers to the reluctance at various levels of the administration to enforce the law. Even though several victims have attempted to take legal action against their masters, only one conviction was handed down in November 2011. The ITUC also reports reluctance to use the Act of 2007 as the basis for investigation, delays in the processing of cases at the investigation stage and at the time of instituting proceedings, and numerous dismissals of cases by public prosecutors, and provides several examples in this respect.

The Committee notes the Government's reference in its 2011 report to five cases examined in 2010 by the National Commission on Human Rights (CNDH). Of these five cases, only one led to a court conviction, and this was following the intervention of the Public Prosecutor's Office, which took action to overturn, in the interests of the law, the decision by the Court of Appeal to release a woman accused of having kept two children as slaves. Further to the ruling being overturned, the woman concerned was sentenced to six months' imprisonment. The Government emphasizes that this outcome was possible thanks to the unbending determination of the public authorities, the prompt instructions issued by the Prefect, cooperation between NGOs and the police, and intervention by the Public Prosecutor's Office. The Committee observes that the Government makes a general reference in its 2012 report to the responsiveness of the authorities in pursuing investigations into allegations of slavery and bringing the cases before the courts, but it fails to provide any specific information on new cases of enforcement of the law or on court decisions that have been handed down. The Government points out that proven cases of vestiges of slavery in Mauritania have become rare.

The Committee notes that the United Nations Special Rapporteur on contemporary forms of slavery states in her report that she had heard of cases of slavery being reported to the relevant authorities. However, either the cases were reclassified under the heading of "inheritance or land dispute" or were not pursued owing to insufficient documentary evidence, or the person who put forward the claim was put under pressure from his or her extended family, master or sometimes local authorities to retract his or her claim. This results in cases never being reported as "slavery" cases and therefore, judicially, slavery cases do not exist.

The Committee notes with *concern* that this information shows that victims continue to face problems in being heard and asserting their rights with regard to both the relevant authorities responsible for law enforcement and the judicial authorities. It recalls that the Conference Committee already expressed its concern in this regard. The Committee emphasizes that victims of slavery are in a situation of considerable economic and psychological vulnerability which calls for proactive measures by the State. However, the public authorities which should protect them appear to be reluctant to enforce the Act of 2007. The Committee recalls that, under the terms of *Article 25* of the Convention, States which ratify the Convention are obliged to ensure that the penalties imposed by law for the exaction of forced labour are really adequate and are strictly enforced. ***The Committee urges the Government to take the appropriate steps to ensure that victims are actually able to turn to the police and judicial authorities to assert their rights and that these authorities conduct investigations promptly, effectively and impartially throughout the country, as required by the Act of 2007. The Committee requests the Government to provide information in its next report on the number of cases of slavery reported to the authorities, the number of cases for which an investigation has been conducted and the number of cases which have resulted in court proceedings. The Committee considers it essential with a view to eliminating slavery that the prison sentences provided for by the Act of 2007 are actually imposed on the perpetrators of these practices.***

(b) *Comprehensive strategy to combat slavery.* In its previous comments, the Committee noted the adoption of the National Plan to Combat the Vestiges of Slavery (PESE), with a budget of 1 billion ouguiyas (MRO) (approximately US\$3.3 million) covering the fields of education, health and income-generating activities. It emphasized that, by addressing poverty, the National Plan represented one component of the action required to combat slavery, although such action should also encompass other measures such as raising the awareness of society and the competent authorities or measures to combat impunity and protect victims. The Committee thus drew the Government's attention to the importance of a comprehensive strategy to combat slavery.

The Committee notes that the Government, in its last two reports, has not supplied any details of the measures taken in the context of the PESE or any information on the adoption of a strategy or comprehensive plan to combat slavery. However, it notes that during the discussion of this case by the Conference Committee, the Government indicated that more than 1,000 actions had been undertaken in the context of the PESE, benefiting a total of 93,000 persons in 282 localities. The Conference Committee underlined that while the measures adopted to combat poverty were an important element in the strategy to overcome slavery, the programmes implemented needed to have the objective of ensuring the economic independence of those who were victims of slavery, and it asked the Government to take measures to improve the economic situation of the most vulnerable categories of the population so that they could escape from the vicious circle of dependence. The Conference Committee also emphasized that the issue of slavery needed to be addressed by Mauritanian society as a whole, and the Government needed to play a key role in raising the awareness of the population and the authorities in relation to the issue and to adopt, in the very near future, a national plan to combat slavery.

The Committee notes that the CGTM, in its observations, complains about the Government's lack of determination to establish a coherent policy for combating slavery and underlines the urgent need to establish specific programmes, in cooperation with all the social partners. The CGTM indicates that the State must launch a genuine national dialogue on this issue in order to contribute to a real raising of public awareness and put an end to these practices once and for all. The CLTM, for its part, is of the view that, despite the measures taken, there is no real political will to end slavery. It asserts

that, with the complicity of the State, slavery remains a current practice throughout the country and appears in different forms which keep slaves and former slaves subjugated to their masters or former masters through denial of the right to property, expropriation, and keeping slaves in a state of need and dependence. The CLTM considers that the State fails to ensure that these categories of citizens have access to basic infrastructure (schools, health care, roads, etc.) and adopts a discriminatory policy regarding access to certain benefits. Finally, the ITUC emphasizes that it is essential for the Government to formulate a national strategy or a plan to combat the persistent and widespread practice of slavery, and also its vestiges and consequences. The ITUC considers that an inter-institutional body must be established for this purpose and that one of its initial functions would be to conduct research into the number of persons who are victims of slavery.

The Committee notes all of the above information. It expresses its *concern* regarding the lack of information since 2010 on the specific measures taken in the context of the PESE, a copy of which has still not been sent by the Government, and also at the lack of progress regarding the formulation and implementation of a comprehensive strategy to combat slavery. The persistence of slavery in Mauritania is rooted in many causes, including economic and cultural factors. In view of the complexity of this phenomenon and its various manifestations, the Committee again emphasizes that the required responses must form part of a comprehensive strategy to combat slavery covering all spheres of action, including awareness-raising, prevention, specific programmes enabling victims to leave the situation of economic and psychological dependence, reinforcement of the capacity of the authorities responsible for prosecution and for the administration of justice, cooperation with NGOs, and the protection and reintegration of victims. In this regard, the Committee recalls, as the Conference Committee also observed, that it is essential for the Government to have reliable qualitative and quantitative information on the characteristics of slavery. ***The Committee therefore urges the Government to take the necessary steps to adopt and implement a comprehensive strategy to combat slavery, which encompasses the various aspects described above. The Committee firmly hopes that this strategy will be accompanied by research to enable an overview of the realities of slavery to ensure better planning of government action in this sphere and to ensure that planned measures target all the population groups and regions concerned.***

(c) *Protection and reintegration of victims.* The Committee recalls that it is essential that victims, once they have been identified, are the recipients of measures to support and reintegrate them. It asked the Government to indicate whether the PESE envisaged the creation of structures intended to facilitate the social and economic reintegration of victims. The Committee observes that the Government, in its 2011 report, indicates that five persons, whose cases had been referred to the National Commission on Human Rights, received direct financial aid or funding for income-generating activities in the context of the PESE. The ITUC points out that the PESE has not been allocated sufficient financial or human resources to combat slavery effectively, that it is not in a position to identify victims or provide them with comprehensive and systematic follow-up, and that the financial assistance given to victims is insufficient to meet their long-term needs. The ITUC adds that the PESE has not been operational for almost a year, since the resignation of its Director-General in 2011.

The Committee notes this information, which demonstrates the need to strengthen the material and financial support for victims so that they can lodge complaints and avoid reverting to a situation of dependence in which their labour would once again be exploited. ***The Committee requests the Government to provide information on the specific steps taken to ensure effective protection for victims of slavery, either as part of the strengthening of the PESE or in the context of the adoption of a comprehensive strategy to combat slavery. In this regard, the Committee hopes that the measures taken will take account of the need to provide victims with legal, economic and psychological support. The Committee also requests the Government to indicate the mechanisms whereby victims receive compensation for the personal and material damage suffered.***

***In conclusion, the Committee hopes that the Government will be in a position to provide detailed information in its next report on the steps taken to continue to combat slavery, which, according to the various sources cited in this comment, remains a widespread practice, with the United Nations Special Rapporteur concluding that “de facto slavery in Mauritania continues to be a slow, invisible process which results in the ‘social death’ of many thousands of women and men”. The Committee therefore trusts that the Government will tackle the resistance which still exists in the various spheres of Mauritanian society.***

***Lastly, the Committee hopes that the Government will avail itself of technical assistance from the Office to help it to overcome the difficulties that it faces.***

***[The Government is asked to reply in detail to the present comments in 2013.]***

## Mauritius

### **Abolition of Forced Labour Convention, 1957 (No. 105) (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:

*Article 1(c) of the Convention. Disciplinary measures applicable to seafarers.* The Committee previously noted the adoption of the Merchant Shipping Act, No. 26 of 2007, which had repealed the Merchant Shipping Act of 1986. The Committee noted, in particular, that under section 217(8)(n) of the Act, refusal to obey the master's order or neglect of duty by a seafarer is

punishable with imprisonment (involving compulsory prison labour). Referring to the explanations in paragraphs 179–181 of its 2007 General Survey on the eradication of forced labour, the Committee recalls that, in order to be compatible with the Convention, provisions imposing penalties of imprisonment on seafarers for breaches of labour discipline should be restricted to actions that endanger the safety of the ship or the life or health of persons.

The Committee notes the Government's previous indication that the Government has drawn the attention of the competent ministry that the above provision is not compatible with the Convention, and the ministry concerned has undertaken to initiate action towards the amendment of this provision in order to bring it into line with the Convention. ***The Committee expresses the firm hope that the necessary measures will soon be taken to amend section 217(8)(n) of the Merchant Shipping Act, 2007, for example by limiting its scope to situations where the safety of the ship or the life or health of persons is endangered, so as to bring this provision into conformity with the Convention, and that the Government will 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.***

## Mexico

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1934)**

The Committee notes the adoption of the General Act of 14 June 2012 concerning the prevention, punishment and elimination of offences connected with the trafficking of persons and protection and assistance for the victims of such offences. It notes that the Act not only makes the trafficking of persons a criminal offence but also criminalizes a number of related offences such as slavery, debt bondage, the imposition of forced labour or services, and the exploitation of labour. The Act also establishes a comprehensive legal and institutional framework for combating these offences, and establishes the competence, powers and coordination of the various players involved in the prevention and punishment of these offences and also in the protection of the victims. The Committee notes with ***interest*** that this new Act enables a comprehensive body of legislation to be used against all forms of forced labour, as defined by *Article 2(1) of the Convention*.

*Articles 1(1), 2(1) and 25. Trafficking in persons. 1. Strengthening of the legislative and institutional framework.* The Committee refers to its previous comments and notes that the new Act of 2012 covers in a more comprehensive and detailed way the various aspects of action against trafficking in persons already established in the legislation that was already in force. The Committee notes that the Inter-Ministerial Committee set up to prevent and penalize the trafficking of persons drew up the National Programme for the Prevention and Punishment of Trafficking in Persons which was adopted on 6 January 2011. The Programme comprises four objectives: increasing knowledge of trafficking in persons; preventing and raising awareness of this phenomenon; contributing to the effective functioning of the justice system; and providing comprehensive protection for victims. The Committee duly notes the detailed information supplied by the Government on the range of activities undertaken within or outside this programme by the numerous ministerial departments concerned, including the National Institute for Migration, consular services abroad, the National Institute for Women, the unit of the Public Prosecutor's Office which specializes in dealing with violence against women and the trafficking of persons (FEVIMTRA), and the National Committee for the Development of Indigenous Peoples. These activities concentrated on raising public awareness of the complex phenomenon of trafficking in persons, particularly through the *Corazón azul* campaign and many of them targeted persons most at risk of becoming victims of trafficking, such as indigenous or migrant workers. Moreover, a large number of activities were undertaken to train public officials on victim identification and protection.

***The Committee encourages the Government to pursue its efforts and expresses the hope that the application of the new Act will allow for trafficking in persons to be more effectively combated. The Committee requests the Government to continue to supply information on the implementation of the National Programme and on the activities undertaken by the Inter-Ministerial Committee with the aim of preventing and punishing trafficking in persons. The Government is also requested to send a copy of the annual report of the Inter-Ministerial Committee on the results achieved in the context of the implementation of the National Programme and on evaluations of the policies pursued in this area, as provided for in sections 93 and 94 of the Act of 2012.***

*2. Participation of public servants in the trafficking of persons.* With reference to allegations of complicity and direct participation of law enforcement officials in the trafficking of persons, the Committee asked the Government to take the necessary steps to conduct the appropriate investigations into cases of participation by public servants, in particular law enforcement officials, in the trafficking of persons. In its report, the Government provides statistics on the administrative penalties imposed on officials of the National Institute for Migration for disciplinary offences such as abuse of authority, mistreatment and negligence. The Government states that in 2011 two preliminary investigations were opened further to complaints made against public servants in trafficking matters. The Committee observes in this regard that both the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Inter-American Commission on Human Rights (IACHR) of the Organization of American States noted with concern during two visits to the country the allegations concerning the involvement of public servants in a number of cases of trafficking, particularly the abduction of migrant workers for handing over to organized crime networks (document CMW/C/MEX/CO/2 of 3 May 2011 and IACHR press releases 105/2011 and 82/2011). ***The Committee urges the Government to take all the necessary measures to ensure that both appropriate administrative and criminal investigations are conducted and that public servants who are found guilty are punished. It is essential that the victims***

*of trafficking in persons, who are often migrant workers in an extremely vulnerable situation, can trust the authorities whose task it is to protect them.*

3. *Protection of victims.* Referring to its previous comments, the Committee notes that the third title of the new Act sets forth in greater detail the rights and the protection already granted to victims as established by the previous legislation (sections 59–83). In this regard, the Committee notes the actions undertaken by the National Institute for Migration to inform victims of their rights (including the right for foreign victims to remain on the national territory) and to promote their access to the justice system. Moreover, the unit of the Public Prosecutor's Office which specializes in dealing with violence against women and the trafficking of persons (FEVIMTRA) has drawn up a protocol for comprehensive assistance to victims aimed at ensuring their safety and providing them with legal, psychological and social support. The Government indicates that FEVIMTRA has established four specialist centres in the country, which have provided 163 trafficking victims with assistance. Moreover, a refuge that specializes in providing protection for trafficking victims has been established and by 30 April 2011 this had assisted 117 victims, with another 98 being referred to reception centres run by civil society. ***The Committee expresses the hope that the Government will continue to take steps to ensure the safety and protection of victims of trafficking and to enable them to assert their rights with regard to the competent authorities. The Government is also requested to indicate the measures taken to promote the rehabilitation of Mexican victims of trafficking who return to the national territory.***

4. *Adequate and strictly enforced penalties.* With reference to its previous request concerning court rulings issued on the basis of the provisions that make trafficking in persons a criminal offence, the Committee notes the Government's indication that it does not have any relevant information. It provides statistics on preliminary investigations opened between June 2010 and May 2011. Out of 100 investigations opened in this period, 35 have been referred to the courts. The Committee can only note with ***concern*** the absence of more precise information on the cases of trafficking in persons that are before the courts or which have resulted in convictions, inasmuch as the powers of the Inter-Ministerial Committee include the gathering of quantitative and qualitative data on criminal offences relating to trafficking in persons. ***Noting that the Act of 2012 confers special powers to combat the trafficking of persons on the Public Prosecutor's Office and on the police, the Committee requests the Government to indicate the steps taken to strengthen the capacities of the police and Public Prosecutor's Office, particularly the unit which specializes in dealing with violence against women and the trafficking of persons (FEVIMTRA), to enable them to identify the victims of trafficking and conduct effective investigations leading to the institution of judicial proceedings. The Committee recalls that, in accordance with Article 25 of the Convention, the exaction of forced or compulsory labour shall be punishable as a criminal offence by penalties that are adequately and strictly enforced. The Committee therefore requests the Government to supply information on judicial proceedings under way and on convictions that have been issued, both on the basis of the new Act of 2012 referred to above and the Act that was applicable at the time of the events. The Committee also requests the Government to indicate whether, as provided for by the Act, the criminal courts have also ruled on the amount of damages to be paid to the victims concerned.***

## 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 drawing the Government's attention to the fact that several legislative texts are not in conformity with the Convention, as they 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). The Committee also noted that consensus had been achieved with the social partners concerning the provisions of the legislation and, in light of the fact that in practice the public authorities did not seem to make use of these provisions for the requisitioning of persons, it hoped 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.

The Committee notes the Government's indication that the *Dahir* of 1938 only concerns the requisitioning of the population in wartime, and that no use is made of this text, which has fallen into disuse. The Committee also notes the Government's indication that the following texts: the *Dahir* of 10 August 1915 on the requisitions for military needs; the *Dahir* of 13 September 1938 on the organization of the country in time of war; and the *Dahir* of 11 May 1931 on civil requisitions, can only be effectively applied in case of force majeure and in order to protect the nation's general interests. The Committee recalls that the abovementioned texts exceed the scope of the exception provided for under *Article 2(2)(d)* of the Convention, according to which requisitioning and imposing work should be strictly limited to situations endangering the existence or well-being of the whole or part of the population. ***Therefore, the Committee urges the Government to take the necessary measures to ensure that the Dahir of 1938 is repealed or amended so as to ensure that the national legislation is in conformity with the Convention and the indicated practice.***

*Article 25. Effective and strictly applied penal sanctions.* For a number of years, the Committee has been drawing the Government's attention to the relatively undissuasive 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 only one of these two penalties). The Committee emphasized that recourse to forced labour is a serious offence and that the penalties incurred must be considered effective enough to act as a deterrent.

The Committee notes the Government's indications that the penalties set out in section 12 of the Labour Code for forced labour correspond to similar penalties which may be imposed for criminal offences. The Government adds that the Penal Code criminalizes any act associated with forced labour, including recourse to violence or torture, and that the Committee's comments will be taken into account in subsequent revisions of the Penal Code. *While noting these indications, the Committee hopes that the Government will be able to indicate in its next report the adoption of the necessary measures to supplement the national legislation in order to ensure that persons who have recourse to forced labour are subject to penal sanctions that are really effective and dissuasive.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1966)**

*Article 1(a) of the Convention. Imposition of prison sentences involving the obligation to work as punishment for expressing political views.* The Committee noted previously that the Press Code (Dahir No. 1-58-378 of 15 November 1958, as amended by Act No. 77-00 of 3 October 2002) provided for sentences of imprisonment for several press-related offences. It requested the Government to indicate whether the revision of the Press Code, to which it had referred in previous reports, was still on the agenda.

The Committee notes the Government's indication that the draft Press Code has been prepared in dialogue with the professionals and actors concerned. It contains no reference to forced labour and tends to decrease the penalties of imprisonment contained in the current Code, as well as extending the discretionary powers of judges to opt for appropriate sanctions. *The Committee notes this information and expresses the hope that the Government will take the necessary measures, within the framework of the adoption of the draft Press Code, to ensure that persons who express political views or views ideologically opposed to the established political, social or economic system in the press cannot be punished with a sentence of imprisonment involving compulsory labour. It requests the Government to provide a copy of the new Press Code, once adopted.*

With regard to the application in practice of section 179 of the Penal Code, which establishes a penalty of imprisonment and a fine for any offence against the King, the heir to the throne or members of the royal family, the Committee observes that in practice those committing such offences are prosecuted under section 41 of the Press Code. In this regard, the Government refers to a number of court cases in which journalists have been convicted under section 41 of the Press Code for misrepresentation of the royal family.

The Committee recalls that, under the terms of the national legislation, persons convicted to a sentence of imprisonment are subject to the obligation to work, by virtue of sections 24, 28 and 29 of the Penal Code and section 35 of Act No. 23-98 on the organization and operation of prison establishments. In view of this obligation to work, the Committee observes that legislative provisions, such as section 41 of the Press Code, which punish peaceful journalistic activities with a prison sentence, are not in conformity with the Convention. *The Committee therefore urges the Government to take the necessary measures to abolish prison sentences for press-related offences, so that the expression of peaceful views opposed to the established political system cannot be punished by prison sentences involving the obligation to work. In the meantime, the Committee requests the Government to provide copies of court rulings under which defendants have been sentenced to prison for the various offences set out in the Press Code.*

*Article 1(d). Imposition of prison sentences involving an obligation to work as punishment for having participated in strikes.* In its previous comments, the Committee noted the information illustrating the scope given by the courts to the provisions of section 288 of the Penal Code. Under the terms of this section, any person who, through the use of violence, force, threats or deception, causes or maintains, or endeavours to cause or maintain a concerted stoppage of work with the aim of forcing an increase or decrease in wages or jeopardizing the free exercise of industry or work, shall be liable to a sentence of imprisonment of from one month to two years. The Committee also noted that a bill regulating the right to strike was in the process of being adopted.

The Committee notes the Government's statement that the basic Bill regulating the right to strike is currently the subject of dialogue with the social partners and that the national courts have not made use of the provisions of section 288 of the Penal Code. *The Committee hopes that the Government will be in a position to provide additional information on the progress made in the adoption of the Bill regulating the right to strike and that within the framework of this process, the Government will take into account the comments of the Committee. In the meantime, please continue indicating whether national courts have recently had recourse to the provisions of section 288 of the Penal Code and, if so, provide copies of the respective court rulings.*

## **Mozambique**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1977)**

*Article 1(a) and (b) of the Convention. Compulsory labour for persons identified as "unproductive" or "anti-social".* The Committee previously noted the Government's indication that the Ministerial Directive of 15 June 1985 on

the evacuation of towns, under which persons identified as “unproductive” or “anti-social” may be arrested and sent to re-education centres or assigned to productive sectors, had become obsolete. It notes the Government’s indication in its latest report that this directive was due to be repealed in conjunction with the revision of the Penal Code. The Committee recalls that, under the terms of *Article 1(a) and (b)* of the Convention, States which ratify the Convention undertake to not make use of any form of forced or compulsory labour as a means of political coercion or education or as a method of mobilizing and using labour for purposes of economic development. ***In view of the fact that the Government has been indicating for several years that the abovementioned re-education centres no longer exist, the Committee requests the Government to take the necessary steps, in the context of the reform of the penal legislation, to formally repeal the Ministerial Directive of 15 June 1985 on the evacuation of towns, so as to bring the legislation into conformity with the Convention and the indicated practice and thereby ensure legal certainty.***

*Article 1(b) and (c). Imposition of prison sentences involving an obligation to work for the purposes of economic development and as a means of labour discipline.* For many years, the Committee has been emphasizing the need to amend or repeal certain provisions of Act No. 5/82 of 9 June 1989 concerning the defence of the economy. This Act provides for the punishment of conduct which, directly or indirectly, jeopardizes economic development, prevents the implementation of the State National Plan or is detrimental to the material or spiritual well-being of the population. Sections 10, 12, 13 and 14 of the Act prescribe prison sentences involving compulsory labour in repeated cases of failure to fulfil the economic obligations set forth in instructions, directives, procedures, etc., governing the preparation or implementation of the State National Plan. Section 7 of the Act penalizes unintentional conduct (such as negligence, the lack of a sense of responsibility, etc.) resulting in the infringement of managerial or disciplinary standards.

The Government previously indicated that Act No. 5/82 concerning the defence of the economy and Act No. 9/87 amending it were repealed by the Assembly of the Republic on 21 March 2007. The Committee noted, however, that on 20 June 2007 the Constitutional Council declared the law adopted by the Assembly repealing Acts Nos 5/82 and 9/87 to be unconstitutional, considering that the blanket repeal of these Acts would have the effect of no longer criminalizing or punishing certain conducts that jeopardize economic development which are not punishable by other legislative texts, thereby leaving a legal vacuum. ***Noting that the Government has not supplied any information in its latest report on the current status of Act No. 5/82 concerning the defence of the economy and Act No. 9/87 amending it, the Committee invites the Government to pursue its efforts to decriminalize the conducts and breaches provided for in the abovementioned provisions of Act No. 9/82 and Act No. 9/87 and to take the necessary steps, in the context of the reform of the penal legislation, to repeal the provisions of Act No. 5/82, as amended by Act No. 9/87, which are contrary to the Convention.***

*Article 1(d). Penalties imposed for participation in strikes.* In its previous comments the Committee noted that, under section 268(3) of the Labour Act (Act No. 23/2007), striking workers who violate the provisions of section 202(1) and section 209(1) (obligation to ensure a minimum service) face disciplinary penalties and may incur criminal liability, in accordance with the general legislation. The Committee asked the Government to indicate the nature of the penalties that may be imposed on striking workers in cases where they incur criminal liability and the provisions of the general legislation applicable in this regard.

The Committee notes the Government’s indication in its 2011 report that the relevant information has not yet been received from the competent authorities and that it will be sent as soon as possible. The Committee recalls in this regard that, according to *Article 1(d)* of the Convention, persons who participate peacefully in a strike cannot be liable to imprisonment involving compulsory labour. ***The Committee therefore once again requests the Government to indicate the nature of the penalties that may be imposed on striking workers in cases where they incur criminal liability pursuant to the provisions of section 268(3) of the Labour Act. Referring also to its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee requests the Government to take the necessary steps to ensure that no prison sentences involving compulsory labour are imposed on workers who participate peacefully in a strike.***

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

## 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)***

For a number of years, the Committee has been examining this case and it is pleased to note the various positive developments that have occurred in Myanmar over the past year, including with regard to the application of this Convention.



### *Historical background*

The Committee has, over a number of years, been following up on the effect given to the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution. In its recommendations, the Commission of Inquiry urged the Government to take the necessary steps to ensure that:

- the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- 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 also emphasized the need for concrete action to be taken immediately in order 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. The Committee of Experts identified four areas in which such “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 101st Session of the International Labour Conference (ILC) in May–June 2012, as well as the discussions and conclusions of that Committee (ILC, 101st Session, *Provisional Record* No. 19, Part Three (A) and document D.5(C)).
- The documents submitted to the Governing Body at its 313th and 316th Sessions (March and November 2012), as well as the discussions and conclusions of the Governing Body during those sessions, including the decision concerning the implementation of the Joint Strategy for the Elimination of Forced Labour in Myanmar.
- The report of the mission of the Officers of the Governing Body submitted to the ILC at its 101st Session in May–June 2012 (ILC, 101st Session, *Provisional Record* Nos 2-2 and 2-2(Add.)).
- Resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution (ILC, 101st Session, *Provisional Record* No. 2-4).
- The communication made by the International Trade Union Confederation (ITUC) received in August 2012, with appendices.
- The reports and communications of the Government of Myanmar received on 14 and 23 March, 5 and 18 April, 4 May, 25 July, 31 August and 17 October 2012.

The Committee welcomes the positive developments in the application of the Convention by the Government referred to above, and, in particular, the amendment of the legislation, the adoption of the Action Plan for the elimination of all forms of forced labour in Myanmar by 2015, and various measures undertaken by the Government, in collaboration with the ILO, aimed at the eradication of forced labour in practice.

### *The Supplementary Understanding of 26 February 2007 – Extension of the complaints mechanism*

In its earlier comments, the Committee has referred to 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. The Committee has noted, in particular, that the SU has set out a complaints mechanism with the 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 SU was extended for the fifth time on 23 January 2012, for a further 12-month period from 26 February 2012 until 25 February 2013 (ILC, 101st Session, *Provisional Record* No. 19, Part Three, document D.5(G)).

### *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 101st Session of the Conference in June 2012. The Conference Committee welcomed the progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry. It observed that many important steps had been

taken by the Government in this regard and noted, in particular, the following: (i) the orders issued by the Commander-in-Chief of the Defence Services in March 2012 advising all military personnel that strict and stern military disciplinary actions shall be taken against perpetrators of military under-age recruitment, and those of April 2012 which make the new law prohibiting forced labour applicable to the military with perpetrators being prosecuted under section 374 of the Penal Code; (ii) budget allocations made for the payment of wages for public works at all levels for 2012–13; (iii) the progress made on the translation into local languages of the brochure on the complaints mechanism; (iv) the statement made by the President on May Day 2012 committing the Government to acceleration of action to ensure the eradication of all forms of forced labour; and (v) disciplinary measures taken against 166 military personnel and action taken under section 374 of the Penal Code against 170 other government officials and five military personnel. The Conference Committee also welcomed the elaboration of a draft Action Plan, developed between the Government and the ILO, to implement the comprehensive, proactive joint strategy for the elimination of all forms of forced labour in Myanmar, which was the subject of a Memorandum of Understanding on the elimination of forced labour in Myanmar signed on 16 March 2012. Welcoming the elaborate and detailed Action Plan, the Conference Committee insisted that all the social partners and civil society organizations should play an active role in prioritizing the elements in the Plan most relevant to the immediate implementation of the Commission of Inquiry's recommendations.

However, the Conference Committee reiterated its concern over the provision of the Constitution which provides for an exception to the prohibition of forced labour for “duties assigned by the Union in accordance with the law in the interest of the public”. It trusted that steps would be taken to ensure that any exception to forced labour provided for in the constitutional and legislative framework is strictly limited to the narrow scope of exceptions established by Convention No. 29.

The Conference Committee welcomed the Government representative's statement that a culture of impunity would not be tolerated. The Committee trusted that the newly adopted legislation would be effectively applied with effective and dissuasive sanctions imposed to punish the use of forced labour in all sectors, and requested the Government to review the impact of the measures that it had reported on so as to be in a position to strengthen them where necessary. It firmly emphasized the importance of the rule of law and the independence of the judiciary as necessary preconditions for real democratization and change. The Conference Committee encouraged the Government and the ILO to monitor closely the progress made in the implementation of the Action Plan, especially as regards the use of forced labour by the military, and requested that information be provided in this regard to the ILO this year.

The Conference Committee also welcomed the release of numerous political and labour activist detainees and expected that all further such prisoners would be immediately released. It trusted that complainants and facilitators would continue to be protected in relation to their use of the complaints mechanism, the retention of which the Conference Committee considered to be critically important. It once again called on all investors to ensure that their activity in Myanmar was not used to perpetuate the use of forced labour but rather made a contribution to its complete eradication, in full respect for international labour standards. Finally, the Conference Committee called for the strengthening of the capacity of the ILO Liaison Office to assist the Government, the social partners and all other relevant stakeholders to play a full and constructive role in the efforts made to eliminate forced labour.

### *Resolution concerning the measures on the subject of Myanmar adopted by the Conference*

The Committee notes a resolution on ILO action regarding Myanmar adopted by the ILC at its 101st Session in June 2012. This resolution followed up on the conclusions of the 313th Session of the Governing Body in March 2012, the Report and the recommendations of the mission to Myanmar undertaken by the Governing Body Officers in May 2012, and the conclusions of the Committee on the Application of Standards at its special sitting on the application of the Convention by Myanmar.

The Committee notes that the mission concluded in its report that there is sufficient political will and technical need in Myanmar to justify a substantially increased and diversified engagement by the ILO. As to whether sufficient progress has been made in implementing the recommendations of the Commission of Inquiry to justify a modification or withdrawal of the measures decided by the Conference in 1999 and 2000, the mission concluded that the legislative changes introduced by the new Government, and increasingly taking effect in recent months, appear to respond appropriately to the Commission of Inquiry's first recommendation on amending the legislation. The mission also concluded that, notwithstanding the progress made in creating an appropriate legal framework, the greatest outstanding challenge in the implementation of the recommendations of the Commission of Inquiry is the total elimination of the actual practice of forced labour in Myanmar. The mission emphasized that existing practices, which have been accepted for decades, will require a major and sustained effort of awareness raising. As long as the practice of the use of forced labour persists, those responsible for it must be investigated, prosecuted and punished. An independent and impartial judiciary trained on issues of forced labour will help put an end to the climate of impunity. The mission also recalled that the finalization and determined implementation of the comprehensive strategy for the total elimination of all forms of forced labour by 2015 are of critical importance in the definitive fulfilment of the recommendation of the Commission of Inquiry.

The Committee notes that the 2012 resolution effectively removed the restrictions on ILO cooperation with the Government of Myanmar that had been set by the Conference resolution of June 1999. It also suspended for 12 months the

recommendation contained in paragraph 1(b) of the resolution adopted by the Conference under article 33 of the Constitution in June 2000. Under the terms of this resolution, the Conference decided, in particular, to lift the limitation imposed on ILO technical cooperation or assistance to the Government of Myanmar, enunciated in the 1999 resolution, to enable the ILO to assist the Government, employers and workers of Myanmar on a variety of issues coming within the ILO's mandate; allow the Government of Myanmar once again to participate in ILO meetings, symposia and seminars in the same way as any other Member, with social partners from Myanmar receiving the same treatment; and suspend for one year the recommendation contained in paragraph 1(b) of the 2000 resolution, which called on the Organization's constituents to review their relations with Myanmar and take appropriate measures to ensure that these relations could not be taken advantage of to perpetuate or extend the system of forced labour referred to by the Commission of Inquiry. The resolution also requested the Government of Myanmar to facilitate the enlarged scope of the activities of the International Labour Office in Myanmar through appropriate arrangements.

### ***Discussions in the Governing Body***

The Governing Body continued its discussions on this case during its 313th and 316th Sessions in March and November 2012 (GB.313/INS/6, GB.316/INS/5/5). The Committee notes that, following the discussion in March 2012, the Governing Body welcomed the following developments in Myanmar since November 2011: adoption of the Ward or Village Tract Administration Act in February 2012, which contains a provision punishing the exaction of forced labour as a penal offence; repeal of the Village Act and the Towns Act of 1907, and prosecution of some offenders; declaration of intent by the Government to develop a joint strategy with the ILO for the full elimination of all forms of forced labour by 2015; further awareness-raising activities for the civilian and military authorities; and the further release of labour activists from detention. While welcoming these important developments which represent major steps towards meeting the recommendations of the Commission of Inquiry, the Governing Body observed that the strict application of the new law and the prosecution and punishment of offenders are critical to achieving this objective. Such measures should therefore be built into the proposed strategy, which should be accompanied by a high-level public commitment to its implementation and be applied throughout the entire territory of Myanmar, including the border areas, in the context of achieving sustainable peace agreements.

The Committee also notes that, in the course of the discussion in November 2012, the Governing Body noted that the Government, which took office in March 2011, continued to carry out a complex political, economic and social reform and transition to democracy following decades of military rule. The Governing Body welcomed, inter alia, the following developments in Myanmar since March 2012: (i) several meetings of the newly expanded Committee for the elimination of forced labour chaired by the Minister of Labour, with the Deputy Minister of Labour, the Deputy Minister of Defence and the ILO Liaison Officer as co-secretaries; (ii) the establishment of a technical Committee of the Working Group to ensure that the commitments of the Action Plan for the elimination of forced labour are addressed in a timely manner with appropriate coordination and inter-ministry cooperation; (iii) the beginning of the work on the implementation of both the ILO Action Plan on under-age military recruitment and the Joint Action Plan on children in armed conflict under Security Council Resolution 1612, of 27 June 2012; (iv) the release of 46 under-age recruits during the current year, which brings the total of under-age recruits released/discharged from the military under the ILO complaints mechanism to date to 261; (v) preparation of a forced labour brochure in seven languages, which was distributed since June 2012 through the military, the General Administration Department, the Ministry of Labour, and the Ministry of Information and at various seminars and workshops, reproduced in full in Myanmar-language newspapers and journals and broadcast over national radio and television; and (vi) further awareness-raising activities for the civilian and military authorities.

The Governing Body observed that there is a significant degree of commitment by all parties to the implementation of the Action Plan for the elimination of forced labour. However, this was only the beginning of a process to develop the foundations for ongoing concerted work to realize the stated objective. Although there were continuing indications that the practice of using forced labour is being reduced, complaints continue to be received under the mechanism set up by the 2007 SU. Thus, between 1 June and 11 October 2012, 158 complaints have been received under the complaints mechanism, including individual cases of under-age recruitment, forced labour complaints with multiple complainants and human trafficking allegations.

### ***Communication received from the International Trade Union Confederation (ITUC)***

The Committee notes that, in its comments, the ITUC welcomes the repeal of the Village Act and the Towns Act and the adoption of the new legislation which contains a provision punishing the exaction of forced labour as a penal offence, in accordance with the Convention. It also welcomes the apparent decline in the exaction of forced labour in practice and the adoption by the Government and the ILO of a joint strategy for the full elimination of all forms of forced labour by 2015. The ITUC expects that all social partners and the civil society organizations will play an active role in prioritizing and assisting in the accelerated application of the elements of the Plan that are most relevant to the immediate implementation of the Commission of Inquiry recommendations.

However, in spite of these positive developments, the ITUC refers to several recent reports which contain allegations about the continued use of forced or compulsory labour in practice in certain regions of the country, in particular by the military. This includes, for example, portering, road construction and repair, military camp construction, fence building and road clearing. Moreover, the ITUC alleges that penal sanctions for the exaction of forced or compulsory labour have

not been strictly enforced against the military and civilians. Appended to the ITUC's communication are three reports which contain allegations relating to forced labour practices by civil and military authorities in Karen, Chin and North Arakan States. The reports contain documented evidence of the incidents of forced labour which involved orders issued by military and civilian officials; information on the results of the surveys based on replies to questionnaires given by heads of household; and a number of field interviews. However, a report concerning Chin State, which focuses on the incidents of forced labour that occurred in 2011, recognizes that the lack of documentation of forced labour exacted by the military in 2012 may be seen as an early indication of efforts on the part of the military to eradicate the practice of portering and other forms of forced labour. A report concerning North Arakan State notes the persistence of forced labour practices in the north, though they noticeably decreased in the central and southern regions of the state. The ITUC concludes that, while some progress is being made, reports covering the three states referred to above provide evidence that forced labour, including forced child labour, remains a serious problem in some areas of the country.

### *The Government's reports*

The Committee notes the Government's reports referred to above, which include replies to the Committee's previous observation, as well as the Government's response to the above comments by the ITUC and to the earlier comments received from workers' organizations. It notes, in particular, the Government's indications concerning the implementation in practice of the Action Plan for the elimination of all forms of forced labour in Myanmar by 2015, elaborated by the Government in cooperation with the ILO. The Government states that the Action Plan has strengthened the activities for the implementation of the SU complaints mechanism and that awareness-raising activities have been intensified in conformity with the Plan. Thus, a series of joint Ministry of Labour/ILO awareness-raising seminars and presentations have been held for villagers, representatives of military and civilian government authorities, police officers, judges, NGOs and representatives of community-based organizations. Military orders have been issued instructing that civilians are not to be used for any military support activity, including portering, sentry/guard duty and camp construction/maintenance in conflict zones. Further orders have been issued instructing that any such civilian support to military operations in non-conflict zones should be freely entered into and provided in the framework of paid employment or service contracts. Orders have also been issued by the Commander-in-Chief of the defence services to all military personnel advising that strict disciplinary actions shall be taken against perpetrators of military under-age recruitment. As regards budget allocations made for the payment of wages for public works at all levels, the Government indicates that officials from the Ministry of Labour and the ILO Liaison Officer had a meeting with officials from the budget department of the Ministry of Finance and Revenue and discussed the national budget allocation procedure; the expenses for labour have been identified, which permits the Ministries concerned to submit their proposals.

The Committee notes that, in his message to the first May Day celebration with tripartite representation, the President committed his Government publicly to the full elimination of all forms of forced labour and to the successful implementation of freedom of association. His statement was widely distributed through all media outlets.

### *The Committee's concluding remarks*

As regards the amendment of the legislation, the Committee notes with *satisfaction* the adoption by Parliament of the Ward or Village Tract Administration Law, of 24 February 2012 (as amended on 28 March 2012), which has repealed the Village Act and the Towns Act of 1907 (section 37) and makes the use of forced labour by any person a criminal offence punishable with imprisonment and fines (section 27A).

However, the Committee notes that no action has been taken or contemplated to amend section 359 of the Constitution (Chapter VIII – Citizenship, Fundamental Rights and Duties of Citizens), which exempts from a prohibition of forced labour “duties assigned by the Union in accordance with the law in the interest of the public”. In its earlier comments, 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 the Government's statement in its reports that the 2008 Constitution has been approved by the people of Myanmar and that no request to amend it has yet been received by Parliament. ***However, the Committee expresses the firm hope that, following the legislative amendment referred to above, the necessary measures will at last be taken with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.***

The Committee welcomes the positive developments in the application of the Convention by the Government referred to above and, in particular, the amendment of the legislation, the adoption of the Action Plan for the elimination of all forms of forced labour in Myanmar by 2015, and various measures undertaken by the Government, in collaboration with the ILO, aimed at the eradication of forced labour for men, women and children in practice. ***The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body and encourages the Government to pursue with vigour its ongoing efforts towards the elimination of forced labour in all its forms, both in law and in practice, by fully implementing the recommendations of the Commission of Inquiry. It requests the Government to provide, in its next report, full information on the measures taken to that effect and, in particular, on the urgent measures taken to ensure that, in practice, forced labour is no longer imposed by the authorities, in particular by the military, as well as on the measures taken to ensure the strict application of the new legislation, so that penalties for the exaction of forced labour under this legislation and the Penal Code are strictly***

*enforced against perpetrators. The Committee also asks the Government to continue to provide information on various practical measures aimed at the eradication of all forms of forced labour, such as the expansion of awareness-raising activities; improvements in dealing with under-age recruitment by the military, including the release of children and imposition of disciplinary and penal sanctions on military personnel; cooperation in the functioning of the SU complaints mechanism; and measures taken to budget adequate means for the replacement of forced or unpaid labour. The Committee reiterates the firm hope that all the necessary measures will be taken without delay to achieve full compliance with the Convention, so as to ensure that all use of forced or compulsory labour in Myanmar is completely eliminated.*

## Namibia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 2000)**

*Article 2(2)(c) of the Convention. Work of prisoners for private enterprises.* The Committee previously noted that, under section 83(1) of the Prisons Act, 1998, the Commissioner may enter into a contract with any institution, person or body of persons for the employment of the labour or services of prisoners who are under a sentence of imprisonment, upon the terms and conditions which may be agreed between the parties. The Committee recalled that while *Article 2(2)(c)* of the Convention expressly prohibits that convicts are hired to or placed at the disposal of private individuals, companies or associations, work for private enterprises can be compatible with *Article 2(2)(c)* only if prisoners voluntarily enter a normal employment relationship with private employers and perform work in conditions approximating a free employment relationship. If these requirements are fulfilled, the work of prisoners for private companies does not come under the definition of forced labour in the Convention, since no compulsion is involved. In this regard, the Committee noted the Government's indication that, in practice, prisoners volunteered for performing work and the opportunity to perform work was conditional on their good behaviour. The Committee requested the Government to provide sample copies of contracts concluded by the Commissioner with private enterprises for the employment of the labour or services of prisoners, as well as copies of any rules or regulations governing their conditions of work.

The Committee takes due note of the Prison Service Orders B submitted with the Government's report. These Orders state that persons who wish to hire prison labour must apply in writing and that the inmate must volunteer to participate. Section 10.6.7 of the Prison Service Orders states that the officer in charge must ensure that prisoners to be hired to private enterprises have indicated their willingness and readiness to work for the enterprise, by completing Form 107D. The Committee notes with *interest* that Form 107D is a consent form, stating that an inmate is voluntarily engaging in the work on the conditions agreed upon by the officer in charge and the prison labour hirer, whereby inmates indicate their name, the name of their prison, the name of the person for whom they volunteer to work and the date. Form 107D requires the inmate's signature, the signature of two witnesses and the signature of the officer in charge. The Committee further notes the copies of Form 107D that have been completed and signed, submitted with the Government's report. In addition, concerning the conditions of the labour performed, the Committee notes that inmates will be paid 35 per cent of the tariff paid for his or her labour. Section 10.6.6 of the Prison Service Orders state that the officer-in-charge should ensure that the hirer of prison labour, as well as their guards, are fully advised regarding the use of prison labour, safeguarding of prisoners and precautions against injuries to prisoners. Moreover, following the performance of labour, prisoners are required to fill out a specific form (Form 107E) confirming that the work they performed was as per the agreed conditions. Lastly, the Committee notes that section 10.7 of the Prison Service Orders prohibits the use of prison labour for the erection of buildings, excavation of foundations, mixing of concrete, transportation of sand, stone and bricks to building sites, as well as in mines, in tasks at railways where injury is common, in carrying heavy objects and in sanitary services outside of the prison.

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

## Nepal

### **Forced Labour Convention, 1930 (No. 29) (ratification: 2002)**

The Committee notes the Government's report, as well as the communications from the International Trade Union Confederation (ITUC) of 31 August 2011 and 31 August 2012.

*Articles 1(1), 2(1) and 25 of the Convention. 1. Trafficking in persons.* The Committee previously requested information on the application of the Human Trafficking and Transportation (Control) Act of 2007 in practice, as well as on the measures taken to prevent, suppress and punish trafficking in persons.

The Committee notes the statement in the ITUC's communication that the Government should take action to enforce the provisions of the Human Trafficking and Transportation (Control) Act of 2007. The ITUC also states that the legal framework should be reviewed to ensure that those involved in trafficking and forced labour can be effectively prosecuted and that the punishments are commensurate with the crimes committed.

The Committee notes the Government's statement that the Ministry of Women, Children and Social Welfare is reviewing the progress of the National Plan of Action (NPA) against trafficking in children and women, in close

collaboration with development partners and other key stakeholders. The Government also indicates that it is implementing a country programme on trafficking in persons, in close collaboration with various NGO's, focusing on prevention, prosecution and protection mechanisms. However, the Committee notes with *concern* the absence of information in the Government's report on the application of the Human Trafficking and Transportation (Control) Act of 2007. The Committee further notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 11 August 2011, expressed concern about the lack of effective implementation of the Human Trafficking and Transportation (Control) Act, 2007 (CEDAW/C/NPL/CO/4-5, paragraph 21). ***The Committee urges the Government to strengthen its efforts to combat trafficking in persons, including within the framework of the NPA against trafficking in children and women, and to provide information on the specific measures taken in this regard. It requests the Government to provide, in its next report, information on measures taken to enforce the Human Trafficking and Transportation (Control) Act, 2007 in practice, and on the impact achieved, particularly the number of investigations, prosecutions and convictions. Moreover, recalling 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 requests the Government to provide information on the specific penalties imposed on persons convicted under the Human Trafficking and Transportation (Control) Act, 2007.***

2. *Vulnerability of migrant workers to conditions of forced labour.* The Committee previously noted the ITUC's communication which outlined migrant workers' vulnerability to trafficking and forced labour. The Committee requested information on the measures taken to protect migrant workers from exploitative practices amounting to forced labour.

The Committee notes that the ITUC, in its more recent communications, expresses concern that recruitment agencies and brokers are involved in the trafficking of Nepalese migrant workers and their subsequent exploitation in conditions of forced labour. The ITUC refers to a study of returned migrant workers, which found that recruitment agencies were routinely involved in the trafficking of migrant workers: the majority of migrant workers interviewed for this study were deceived concerning a substantial aspect of their employment terms, and many faced high recruitment fees and subsequent debt, the confiscation of their passports, threats, physical and verbal abuse. The ITUC states that the Government has not taken appropriate action in its own jurisdiction to reduce and eliminate the incidence of forced labour and highlights that the effective enforcement of the Foreign Employment Act would significantly reduce migrant workers' vulnerability to forced labour. While the Foreign Employment Act regulates the activities of recruitment agencies, this Act is not effectively enforced to punish recruitment agencies who repeatedly violate the Act. The ITUC states that the Government has failed to adequately monitor and punish recruitment agencies for failing to comply with their responsibility under the Foreign Employment Act and that, despite widespread violations, only 14 recruitment agencies have been fined under the Act. The ITUC also indicates that, while in August 2012, the Government banned women under the age of 30 from migrating for domestic work in Kuwait, Qatar, Saudi Arabia and the United Arab Emirates, these bans are likely to have the unintended outcome of increasing risks for these women who will continue to seek work through informal routes. Furthermore, the ITUC states that the measures taken by the Government to combat trafficking have not addressed the wider problems of trafficking for labour exploitation which affects migrant workers. The ITUC further alleges that complaints and compensation mechanisms are largely inaccessible to most migrant workers. Lastly, the ITUC references a research study which indicated that the several heads of recruitment agencies admitted to paying bribes to government officials. The ITUC states that the Government must establish an independent body to carry out a prompt, thorough and impartial investigation into allegations of bribery and corruption relating to migration for foreign employment, including of government officials.

The Committee notes the Government's statement that, in collaboration with the ILO, the Ministry of Labour and Transport Management implemented a project entitled "Protection of Nepalese migrant workers from forced labour and human trafficking" from June 2009 until September 2011. The Government states that major accomplishments of this project include: (i) the translation and promotion of ILO Conventions related to forced labour; (ii) the revision of the foreign employment regulations; (iii) increased compensation for migrant workers who are victims; (iv) strengthening of the data and information system in the Department of Foreign Employment and Foreign Employment Tribunals; (v) trainings for the concerned government officials and stakeholders on issues of forced labour, human trafficking, the monitoring of recruitment of migrant workers and the role of labour attachés; and (vi) partnerships with the association of foreign employment recruitment agencies to promote ethical recruitment procedures and the implement its code of conduct. The Committee also notes the implementation of an ILO project entitled "Preventing trafficking of women and girls for domestic work" from November 2011 to June 2012. According to information from the ILO Special Action Programme to Combat Forced Labour (SAP-FL) of August 2012, results from this project include: (i) awareness raising on safe migration and trafficking as well as training to women and girls on these subjects; (ii) the production and distribution of 13,000 brochures and 9,000 posters on safe migration and the risks of human trafficking and forced labour for domestic work; (iii) the provision of training to governmental and non-governmental representatives on anti-trafficking; (iv) preliminary steps towards developing a skills-building programme to at-risk or former victims of trafficking; and (v) training for law enforcement officials on countering trafficking for forced labour.

The Committee takes due note of the measures taken by the Government. However, the Committee notes that CEDAW, in its concluding observations of 11 August 2011, expressed concern about the situation of Nepalese women migrant workers and in particular, the fact that a large number of Nepalese women are undocumented, which increases

their vulnerability to sexual exploitation, forced labour and abuse. It also expressed concern at the limited initiatives to ensure pre-departure information and skills training as well as the lack of institutional support both in Nepal and in countries of employment to promote and protect the rights of Nepalese women migrant workers (CEDAW/C/NPL/CO/4-5, paragraph 33).

The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. ***The Committee therefore urges the Government to pursue its efforts to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour, including through the effective application of the Foreign Employment Act. The Committee requests the Government to provide, in its next report, information on the application of the Foreign Employment Act in practice, particularly the number of violations reported, investigations, prosecutions and the specific penalties applied. Expressing its concern at allegations of complicity of government officials, the Committee urges the Government to redouble its efforts to ensure that perpetrators of trafficking in persons and forced labour of migrant workers, and complicit government officials, are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. Lastly, the Committee requests the Government to continue to provide information on steps taken in this regard, particularly on measures adopted specifically tailored to the difficult circumstances faced by migrant workers, including measures to prevent and respond to cases of abuse of migrant workers and to grant them access to justice, as well as to other complaints and compensation mechanisms.***

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

## Niger

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1961)**

*Articles 1(1) and 2(1) of the Convention. Slavery and slave-like practices.* For several years, the Committee has examined the matter of slavery in Niger which exists in a number of 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 previously a number of legislative and institutional measures taken by the Government, including the adoption of Act No. 2003-025 of 13 June 2003 incorporating into the Penal Code sections 270-1 to 270-5, which define the elements constituting the crime of slavery and slavery offences and lay down the applicable penalties, and the establishment in August 2006 of the National Committee to combat the vestiges of forced labour and discrimination, which has responsibility for devising a national action plan to combat the vestiges of forced labour and discrimination. The Committee nonetheless expressed concern at the lack of information on the adoption of new measures specifically targeting slavery and its vestiges, particularly as in October 2008 the Court of Justice of the Economic Community of West African States (ECOWAS) found that Niger had failed to afford sufficient protection to the rights of a young girl who was a victim of slavery, and as the United Nations Committee on the Rights of the Child, in its concluding observations, expressed deep concern that Niger had not provided information in its report on caste-based slavery practices while such practices existed throughout the country (CRC/C/NER/CO/2, 18 June 2009).

The Committee notes that, in its report received in September 2011, the Government states only that the national action plan to combat all forms of forced labour, and slavery in particular, has not yet been adopted.

The Committee notes that the survey produced by the National Statistics Institute and the International Labour Office on the forms of forced labour found in Niger and involving adults and children was validated in September 2011. According to the survey, more than 59,000 adults are victims of forced labour, that is 1.1 per cent of the total adult population. For the most part, these victims perform domestic work (48.2 per cent) or work in agriculture or stock breeding (23.6 per cent). The survey sets three criteria for defining forced labour: non-voluntary recruitment (the adult works under traditional hiring practices for a private individual, an enterprise or a landowner); a situation of dependency (the adult works in exchange for food or accommodation, is paid in kind or not at all, or pays his wage back to a landowner and is unable to enjoy the fruits of his labour); and deprivation of freedom (the adult is prevented from changing jobs either by the employer or because of the social set up). Thus, an adult is deemed to be subjected to forced labour where his recruitment is not voluntary, or where he is deprived of freedom and when, in addition, he or his household are in a situation of dependency.

Lastly, the Committee notes that in the Universal Periodic Review of Niger undertaken by the Human Rights Council in March 2011, the Government agreed to all the recommendations regarding measures to be taken to combat slavery and ensure that the perpetrators of such practices are effectively prosecuted and the victims protected and compensated (see particularly recommendations 76.37 to 76.46 in document A/HRC/17/15).

In light of the above, the Committee once again notes with *regret* the absence of any information from the Government in its reports on measures taken to combat slavery. ***The Committee expresses the firm hope that in its next report the Government will be in a position to indicate the measures taken to secure the adoption of a national plan of***

*action to combat all forms of forced labour, particularly slavery. It draws the Government's attention to the importance of a comprehensive strategy to combat slavery that includes measures to raise awareness in society and among competent authorities, measures to combat poverty and also accompanying measures to reintegrate the victims so as to prevent them from returning to a situation of vulnerability in which they would once again be exploited for their labour. The Committee requests the Government to provide information on the measures taken by the National Committee to fight the vestiges of forced labour and discrimination and on the means it may draw on to perform its duties.*

*Article 25. Application of effective penal sanctions.* The Committee recalls that according to *Article 25* of the Convention, the Government must ensure that the penalties established in law are really effective and strictly enforced. The Committee notes that, in its report, the Government states that no judicial decisions have been taken under sections 270-1 to 270-5 of the Penal Code which make slavery a criminal offence. The Committee underlines that it is essential that victims should have access in practice to the police and judicial authorities in order to assert their rights so that the perpetrators of the crime of slavery or of slavery offences, as prescribed in the Penal Code, are brought to justice, and where appropriate, convicted. ***The Committee accordingly hopes that the national action plan will provide for measures to ensure that the provisions of the Penal Code criminalize slavery are publicized, as well as measures to raise awareness among those stakeholders participating in the fight against slavery, including local authorities, criminal investigation officers and judges, as well as associations able to file civil suits in slavery cases. It requests the Government to provide information in its next report on judicial decisions handed down under sections 270-1 to 270-5 of the Penal Code and to provide copies thereof.***

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(a) of the Convention. Punishment for expressing certain political views or views ideologically opposed to the established political, social or economic system.* The Committee notes that, following the adoption of Ordinance No. 2010-035 of 4 June 2010 establishing the freedom of the press, the Ordinance of 1999, which in turn repealed Act No. 97-26 on which the Committee had commented previously, has been repealed. The Committee notes with **satisfaction** that, with the adoption of Ordinance No. 2010-035, press-related offences such as insults and defamation may no longer be punished by prison sentences.

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

## **Nigeria**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views.* 1. *Public Order Act.* 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), with such 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 (including compulsory prison labour) as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee further recalled that 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 also fall within the scope of the Convention if such restrictions are enforceable with penalties involving compulsory labour.

The Committee notes the Government's statement that contraventions of the Public Order Act may be sanctioned with a fine, arrest and/or imprisonment. However, noting the Government's reference to the Constitution of 1999, the Committee observes that in 2007, the Court of Appeal examined the constitutionality of the Public Order Act. ***The Committee requests the Government to provide copies of the relevant court decisions on the constitutionality of the Public Order Act, with its next report. In this regard, it requests the Government to indicate whether the Public Order Act is still in force, and if so, to provide information on the application of this Act in practice.***

2. *Legislation relating to the press and media.* 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. It expressed the hope that measures would be taken to amend or repeal these provisions.

The Committee notes with **regret** an absence of information on this point in the Government's report. The Committee also notes the information in a report prepared by the Office of the High Commissioner for Human Rights, for the Human Rights Council's Universal Periodic Review of 5 January 2009, that the Special Representative of the Secretary-General on human rights defenders expressed concern about freedom of expression in the country, in particular regarding the work of journalists (A/HRC/WG.6/4/NGA/2 paragraph 42). ***The Committee requests the Government to take the necessary measures to repeal or amend the abovementioned provisions of the Nigerian Press Council***



*(Amendment) Act, 2002, to ensure that no penalties of imprisonment (involving compulsory labour) may be imposed for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It also requests the Government to provide copies of any relevant court decisions relating to the application of this Act in practice. The Committee further requests the Government to provide information on the application in practice of criminal penalties for the offence of libel related to the activities of journalists, with its next report.*

*Article 1(c). Punishment for breaches of labour discipline. 1. Labour Act.* The Committee previously noted that, pursuant to section 81(1)(b) and (c) of the Labour Act, 1974, a court may direct the 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. The Committee recalls that since *Article 1(c)* of the Convention expressly prohibits the use of any form of forced or compulsory labour as a means of labour discipline, the punishment of breaches of labour discipline with sanctions of imprisonment (involving an obligation to perform labour) is not in conformity with the Convention. **Noting an absence of information on this point in the Government's report, the Committee requests the Government to take the necessary measures to amend or repeal the abovementioned sections of the Labour Act, to ensure that penalties of imprisonment involving compulsory labour, cannot be imposed for breaches of labour discipline.**

*2. Merchant Shipping Act.* The Committee previously noted certain provisions of the Merchant Shipping Act of 1990 (section 117(b), (c) and (e)) under which seafarers are liable to imprisonment for breaches of labour discipline, even in the absence of danger to the safety of the ship or to persons. The Committee expressed the firm hope that this Act would be amended to bring it into conformity with the Convention.

The Committee notes the Government's statement that a new Merchant Shipping Act was adopted in 2007, repealing the Merchant Shipping Act of 1990. In this regard, the Committee notes with **serious concern** that section 196(2) of the Merchant Shipping Act of 2007 provides for penalties of imprisonment for various breaches of labour discipline (in the absence of a danger to the safety of the ship or of persons), including wilfully disobeying any lawful command (section 196(2)(b)) or continuing to wilfully disobey such commands or neglecting duties (section 196(b)(c)). **The Committee urges the Government to take the necessary measures to amend or repeal the abovementioned sections of the Merchant Shipping Act, to ensure that penalties of imprisonment, involving compulsory labour, cannot be imposed for breaches of labour discipline where such breaches do not endanger the safety of the vessel or the life or health of persons.**

*Article 1(d). Punishment involving compulsory labour for participation in strikes.* In its previous comments, the Committee noted that, pursuant to section 17(2)(a) of the Trade Disputes Act, Cap. 432, of 1990, participation in strikes may be punished with imprisonment. In this regard, the Government indicated that these provisions would be addressed in the Collective Labour Relations Bill.

The Committee notes the Government's statement that the Collective Labour Relations Bill is still pending in the National Assembly. The Committee also notes that the Trade Unions (Amendment) Act of 2005, amending the Trade Unions Act, included additional penalties of imprisonment for the participation in strikes. **Referring to its comments made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee requests the Government to take the necessary measures to ensure that the Collective Labour Relations Bill does not provide for penalties of imprisonment for the peaceful participation in a strike, in conformity with the Convention. It expresses the firm hope that this Bill will be adopted in the near future, and requests the Government to provide a copy, once adopted.**

## Pakistan

### Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

*Articles 1(1), 2(1) and 25 of the Convention. 1. Debt bondage. Difficulties in the implementation of the Bonded Labour System (Abolition) Act (BLSA), 1992.* The Committee refers to its earlier comments in which it noted the allegations concerning the difficulties in the implementation of the BLSA made by the All Pakistan Federation of Trade Unions (APFTU), the All Pakistan Trade Union Federation (APTUF), the Pakistan Workers' Federation (PWF) and the International Trade Union Confederation (ITUC). The workers' organizations considered that the BLSA had not been properly applied and those who used bonded labour had been able to do it with impunity. The ITUC observed, in particular, that 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.

The Committee further notes that, in a communication received from the Pakistan Workers' Confederation (PWC) on 21 November 2011, the PWC observes that there is still prevalence of bonded labour and human trafficking, in particular, in rural areas, which could only be prevented through the provision of economic and social measures for the elimination of poverty and providing education and access to gainful employment to the victims, as well as by enforcement and respect of the law.

The Government indicates in its reply that the district vigilance committees are in place and functional, and their meetings are held regularly in most of the districts. However, the Committee observes that copies of minutes of the district

vigilance committees' meetings supplied by the Government date back to 2007 (Faisalabad), 2009 (Nankana Sahib, Rawalpindi and Gujrat) and July 2011 (Gujranwala), and the only document relating to a complaint cell working under the district vigilance committee (Faisalabad) dates back to 2006. ***The Committee therefore asks the Government to provide, in its next report, updated information concerning the functioning of the vigilance committees, including copies of monitoring/evaluation reports, and to indicate measures taken or envisaged to ensure their proper functioning and effectiveness.***

*Implementation of the National Policy and Plan of Action for the Abolition of Bonded Labour.* The Committee notes the Government's indications concerning measures taken within the framework of its 2001 National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers. It notes, in particular, that a project entitled "Elimination of Bonded Labour in Brick Kilns" was initiated in the Province of Punjab in 2009, and a project entitled "Strengthening Law Enforcement Responses and Action against Internal Trafficking and Bonded Labour" was started in 2010 by the ILO in Sindh and Punjab Provinces. It also notes the Government's brief indications concerning several projects aiming at providing free legal aid services to bonded labourers undertaken in various Provinces by the Bonded Labour Fund established under the BLSA rules. The Committee further notes the Government's indication that, following the 18th Constitutional Amendment, the Provinces are drafting and adopting legislation on bonded labour in collaboration with the local office of the ILO.

***While noting this information, the Committee reiterates the firm hope that the Government will redouble its efforts 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. The Committee asks the Government to provide, in particular, information on the implementation and the outcome of the 2009 and 2010 projects to combat bonded labour referred to above, including copies of the relevant reports and available statistics. The Committee hopes that the Government will continue to provide information on the activities of the National Committee for the Abolition of Bonded Labour and Rehabilitation of Bonded Labourers which was established to coordinate the implementation of the Plan and to review the implementation of the BLSA, as well as information on the activities of the Bonded Labour Fund established under the BLSA rules. Please also provide information on the legislative developments at the provincial level and supply copies of the legislation on bonded labour, as soon as it is adopted.***

*Debt bondage. Data-gathering measures to ascertain the current nature and scope of the problem.* In its earlier comments, the Committee referred to a report entitled "Rapid assessment studies of bonded labour in different sectors in Pakistan" conducted at the initiative of the Ministry of Labour and the ILO 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. The report 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.

The Committee notes that no such national survey has yet been carried out. The Government indicates, however, referring to the difficulties in the identification of bonded labourers, that it will consult the social partners to devise strategies for a survey on bonded labour through Provinces, as the subject of labour has been transferred to them following the 18th Constitutional Amendment. The Committee also notes a survey conducted in the brick kiln industry of the Provinces of Punjab and Sindh showing the numbers of brick kilns registered and workers employed as of 31 December 2011, communicated by the Government with its report.

***The Committee reiterates the firm hope that the Government will soon be in a position to undertake, in accordance with the mandate of its 2001 National Policy and Plan of Action, 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 in its next report, information on the progress achieved in this regard.***

2. *Trafficking in persons.* The Committee previously noted from the report of the International Organization for Migration (IOM) that 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 notes an Anti-Human Trafficking report for 2009 provided by the Government, which contains information on the prevention and victim protection measures, as well as on the prosecution of perpetrators. It notes, in particular, that 21,735 cases against human traffickers were registered until 31 October 2009, which resulted in 3,371 convictions.

***The Committee asks the Government to provide, in its next report, updated information on the anti-trafficking measures taken by the competent agencies and organizations, including statistics on the number of trafficking cases registered under the Prevention and Control of Human Trafficking Ordinance (2002), the number of prosecutions and convictions and indicating the penalties imposed on perpetrators. 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 regard.*

3. *Restrictions on voluntary termination of employment* The Committee refers to its earlier comments, in which it 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 the 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.

*While duly noting the Government's indication in its report that the Essential Services (Maintenance) Act, 1952, is applied prudently and in rare cases, the Committee expresses the firm hope that the necessary measures will soon be taken in order to bring the federal and provincial essential services Acts into conformity with the Convention on this point and that the Government will report on the progress achieved in this regard.*

*Article 25. Penalties for the exaction of forced or compulsory labour.* The Committee notes the Government's indications concerning the number of cases of bonded labour detected after raids by the police in 2010–12. It also notes the number of the trafficking-related complaints registered under the Prevention and Control of Human Trafficking Ordinance (2002), Emigration Ordinance, Passport Act and other relevant laws, as well as the number of prosecutions and convictions registered until 31 October 2009.

*The Committee asks the Government to provide updated information on the enforcement of the Prevention and Control of Human Trafficking Ordinance (2002), communicating the numbers of trafficking-related complaints registered, court proceedings initiated and convictions obtained, including copies of the relevant court decisions and indicating the penalties imposed. The Committee also requests the Government once again to supply information on the legal action taken against employers of bonded labourers under the BLSA, including copies of the court decisions and indicating the penalties imposed.*

## Paraguay

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1967)**

The Committee notes the Government's report and its annexes, as well as the comments made by the International Trade Union Confederation (ITUC) and the National Confederation of Workers (CNT), dated 31 August 2011, which were forwarded to the Government on 6 and 15 September 2011, respectively.

*Articles 1(1) and 2(1) of the Convention. Debt bondage of indigenous communities in the Chaco.* For many years, the Committee's comments have been addressing the situation of the many indigenous workers in agricultural ranches in the Paraguayan Chaco, who are victims of debt bondage. On the basis of several comments made by workers' organizations, the discussion of this case by the Conference Committee on the Application of Standards in 2008 and the report *Debt bondage and marginalization in the Chaco of Paraguay*, prepared in the context of the technical assistance provided to Paraguay by the ILO Special Action Programme to Combat Forced Labour (SAP-FL), the Committee expressed concern at the mechanisms which result in the debt bondage of indigenous workers who are trapped in situations of forced labour. It also emphasized that the fact that these workers do not have any land increases their vulnerability.

In its previous comments, the Committee noted that the Government had taken a number of measures, including the creation of the Commission on Fundamental Rights at Work and the Prevention of Forced Labour (Resolution No. 230 of 27 March 2009), which developed an action plan including: awareness-raising activities and training for labour inspectors; the establishment of an office of the Department of Labour in the locality of *Teniente Irala Fernandez* (central Chaco); and the adoption with the support of the ILO of the Decent Work Country Programme, in which the eradication of forced labour is an important component. The Committee emphasized that these measures are a first step, but that they must be reinforced and lead to systematic action commensurate with the gravity of the problem.

In its latest report, the Government refers to the relief activities undertaken in the context of the National Programme for Indigenous Peoples (PRONAPI). PRONAPI also prepared a questionnaire intended to compile data on the living conditions of indigenous communities. The Government enumerates a number of awareness-raising activities undertaken in 2009 and 2011 by the Commission on Fundamental Rights at Work and the Prevention of Forced Labour, as well as the training activities for labour inspectors and workers' and employers' organizations. The latter Commission established a Subcommission in July 2011 in the Chaco region, the mandate of which includes receiving complaints concerning violations of labour rights, promoting the dissemination of fundamental rights at work and preparing a regional action plan on fundamental rights and the prevention of forced labour. The Subcommission met twice in 2011. The Government adds that, up to May 2011, the Ministry of Justice and Labour carried out over 50 inspections of agricultural ranches in the Chaco and that no situation of forced labour was detected. Minutes were drawn up and fines imposed for violations of labour legislation relating to the registration of workers and the payment of wages.

The Committee notes the comments of the Central Confederation of Workers-Authentic (CUT-A), forwarded by the ITUC. The CUT-A, based on interviews held with representatives of indigenous organizations of the Chaco, emphasizes that the problem of forced labour in agricultural ranches and factories in the Chaco persists, and that the State has not

adopted effective measures to eliminate these practices. The trade union insists on: the marginalization of indigenous communities, which have been forgotten by the State; the system of permanent debt in which major agricultural enterprises keep workers from these communities, thereby preventing them from seeking alternatives; the discrimination of which these workers are victims, as they systematically receive wages that are lower than those of other workers and, in many cases, are not even paid half of the minimum wage; the corruption which prevents the public authorities from discharging their duties appropriately, including when dealing with complaints, and also prevents the restitution of ancestral lands; and the inadequacy of the resources available to the Ministry of Justice and Labour to protect indigenous communities.

The Committee notes all of this information. It observes that the activities undertaken up to now by the Commission on Fundamental Rights at Work and the Prevention of Forced Labour are mainly related to awareness raising, and that those carried out in the context of the PRONAPI are concerned with food self-sufficiency. *The Committee strongly encourages the Government to pursue its efforts with a view to combating the forced labour of indigenous workers in the Chaco. It hopes that measures will be taken that will allow the Subcommission on Fundamental Rights at Work and the Prevention of Forced Labour in the Chaco region to adopt a regional plan of action to strengthen the measures taken by the various bodies involved in combating forced labour, both with regard to prevention and repression, and the protection of victims. It requests the Government to ensure that this plan responds to the situation of vulnerability of indigenous workers so as to protect them against the debt mechanisms that result in debt bondage. The Committee also refers the Government to the comments that it is making under the Indigenous and Tribal Peoples Convention, 1989 (No. 169).*

The Committee notes that a number of inspections have already been undertaken in the Chaco region and that none of them detected situations of forced labour. However, the Committee observes that, in their comments, the ITUC and the CNT and the CUT–A confirm the persistence of forced labour in the Chaco region. *The Committee emphasizes the need to strengthen the labour inspectorate, and particularly the office of the Labour Department in the locality of Teniente Irala Fernandez as well as the Subcommission on Fundamental Rights at Work and the Prevention of Forced Labour in the Chaco region, the mandate of which includes receiving complaints concerning violations of labour rights. The Committee requests the Government to take the necessary measures to ensure that these bodies have at their disposal adequate human and material resources as well as access to appropriate training so as to identify victims and to enable them to assert their rights; deal effectively with the complaints received and conduct relevant investigations; and travel rapidly and effectively in the areas at risk.*

*Article 25. Imposition of effective penalties.* The Committee emphasizes that the effective imposition of penalties in the event of violations of labour legislation is an essential element in combating forced labour, as it is characterized by the accumulation of several violations of labour law, which must be penalized as such. Moreover, taken together, these labour law violations constitute the criminal offence of forced labour, which must themselves be criminalized and give rise to penal sanctions.

(a) *Administrative sanctions.* *The Committee once again requests the Government to provide information on the number of cases in which the inspection services have detected infringements of sections 47, 176 and 231 of the Labour Code respecting the protection of wages, including with regard to compliance with the minimum wage and the operation of work stores. Please provide information on the fines imposed on employers and on the compensation granted to workers. The Committee refers in this respect to the comments made on the application of the Protection of Wages Convention, 1949 (No. 95).*

(b) *Penal sanctions.* With reference to its previous comments, the Committee notes the Government's indication in its report that no complaint of forced labour has been made. The Committee recalls that, under the terms of *Article 25* of the Convention, penal sanctions must be imposed and strictly enforced upon those found guilty of the exaction of forced labour. *The Committee requests the Government to provide information on the measures adopted to raise the awareness of the Office of the Public Prosecutor with regard to the issue of debt bondage and to strengthen its cooperation with the labour inspection services in this respect. The Committee also requests the Government to indicate the provisions of the penal legislation which may be used to prosecute persons exacting forced labour and, where appropriate, to ensure that the national legislation contains sufficiently precise provisions so that the competent authorities can criminally prosecute and penalize those responsible for such practices.*

*Article 2(2)(c). Obligation to work imposed on non-convicted detainees.* For many years, the Committee has been emphasizing the need to amend the Act on the prison system (Act No. 210 of 1970), under the terms of which work in prison shall be compulsory for persons subjected to security measures in a prison establishment (section 39 read in conjunction with section 10 of the Act). The Committee recalled in this respect that, under the terms of *Article 2(2)(c)* of the Convention, only prisoners who have been convicted in a court of law may be subjected to the obligation to work. The Committee observes that in the past the Government indicated that the provisions of the Act on the prison system would be amended or repealed, first within the framework of the adoption of a Prison Code, then through the adoption of a new Code of Penal Procedure. The Committee notes that the Government has not provided any information in its latest report on the progress made in the adoption of a new Code of Penal Procedure. It has provided a copy of the internal rules of the *Esperanza* prison unit, to which only convicted prisoners are sent. *As this matter has been the subject of the Committee's comments for many years, the Committee trusts that the Government will not fail to take the necessary measures to*

*bring the national legislation into conformity with the Convention by ensuring that prisoners awaiting judgment and persons detained without being convicted are not subject to the obligation to perform prison work. The Committee particularly emphasizes the need to amend the Act of 1970 on the prison system since, according to the information available on the website of the Ministry of Labour and Justice, of the 6,146 persons who are detained, only 1,772 have been convicted in a court of law.*

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

## Peru

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

The Committee takes note of the Government's report, which contains very detailed information in reply to its previous comments, and of the observations submitted by the Single Confederation of Workers of Peru (CUT) on the application of the Convention, forwarded to the Government in September 2011.

*Articles 1(1) and 2(1) of the Convention. Preliminary remarks.* In its previous comments the Committee noted the measures taken by the Government to strengthen the institutional and legislative framework for combating the different forms of forced labour that exist in Peru: practices akin to slavery and debt servitude inflicted on indigenous peoples, trafficking in persons and the exploitation of women in domestic service. It noted in particular the approval of the National Plan to Combat Forced Labour and the creation of the National Committee to Combat Forced Labour (CNLTF) and of various other institutions dealing with forced labour, in particular in the labour inspectorate and the police. It asked the Government to provide information on the implementation of the various components of the action plan.

The Committee notes that, in its observations, the CUT underlines that Peru has made progress in combating forced labour by strengthening the legal and institutional framework to do so, but that much remains to be done in order to eradicate all forms of forced labour in the country. Peru has no statistical estimates of the phenomenon other than the figures compiled by the authorities that receive complaints, which represent only the tip of the iceberg. By way of illustration, the CUT describes in detail the process leading to the exaction of forced labour in two specific situations in the Madre de Dios region: the first concerns farmers from very poor regions in the Andes who are victims of trafficking and debt servitude in the goldmines, and the second concerns indigenous communities working in the logging sector. The CUT likewise refers to nut harvesting and emphasizes that the common denominator in the imposition of such practices is poverty and the limited presence of the State.

1. *Combating forced labour, particularly as imposed on indigenous communities. (a) National Plan to Combat Forced Labour (PNLCTF).* The Committee notes that the PNLCTF has been updated following the adoption of an operational plan for the period 2012–13 covering six sets of priority actions. It also notes that the CNLTF has drawn up a proposal for a new national plan, which has been submitted to a process of consultation at national and regional levels. The plan, which covers the period from 2013–17 and sets specific objectives and indicators for implementation of its various components, will provide a comprehensive and inter-institutional framework for combating forced labour. ***The Committee hopes that the new National Plan (2013–17) will be adopted in the near future and that due account will be taken, in the consultation process, of the obstacles that have prevented the effective implementation of some of the measures set forth in the current PNLCTF. It requests the Government to provide information on any reports assessing the implementation of the 2012–13 operational plan. The Committee also asks the Government to ensure that the plan will have the necessary financial support for its implementation at both national and regional level.*** In this context, the Committee notes from the 2012–13 operational plan that one of the priorities is to promote the establishment of regional committees to combat forced labour and to provide them with technical support in terms of design, standards and operations, with a view to enabling them to carry out a diagnosis of forced labour and develop regional plans to fight forced labour. The Committee welcomes in this connection the creation of a regional committee for the Ucayali region. ***Considering that it is essential to strengthen the State's presence in regions with a marked prevalence of forced labour, the Committee expresses the hope that the Government will take the necessary measures to allow the establishment and effective functioning of regional committees to combat forced labour.***

*(b) Legislative measures.* In its previous comments the Committee underscored the need to supplement the national legislation by incorporating in the criminal law a provision that expressly criminalizes forced labour and defines its various components in order to cover all forced labour practices that exist in Peru. It notes from the information sent by the Government in its report that the proposal to amend the Penal Code, drafted by the Ministry of Labour, which aimed to make forced labour a criminal offence, has been unsuccessful because the general office of the legal counsel, within the Ministry of Justice, is of the view that forced labour is already covered by the provisions of section 153 of the Penal Code under which the trafficking of persons is a criminal offence. The Committee notes that the Ministry of Labour's General Directorate of Fundamental Rights and Safety and Health does not share that view and has drafted a new proposal that will be submitted directly to the Ministry of Justice. The Committee further notes that, in its observations, the CUT is adamant that the law should prohibit forced labour, and particularly any type of employment relationship that involves the settlement of a debt by work and leads to debt bondage. The CUT also submits that some elements of the process whereby forced labour is imposed on indigenous communities in the logging sector ought to be dealt with in regulations.

The Committee points out in this connection that forced labour as defined in the Convention is a broader concept than the trafficking of persons and that, in view of the principle that criminal law must be strictly interpreted, it is important that national courts should have precise rules to follow. Furthermore, the *modi operandi* of human trafficking are not necessarily found in the other forms of forced labour, particularly debt bondage or certain forms of exploitation of the labour of indigenous communities. ***Therefore the Committee hopes that the Government will take the necessary steps to ensure that the Ministry of Labour's legislative proposal to include forced labour in the Penal Code as a separate offence making all forms of forced labour punishable and providing for penalties commensurate with the seriousness of the offences, is adopted at the earliest possible date, as provided in the 2012–13 operational plan of the PNLCTF.***

With reference to its previous observation, the Committee notes that an amendment has been drafted to the regulations on the registration of private employment agencies, providing for the removal from the National Business Register of any enterprises which would have participated, allowed or intervened in the commission of the offences of human trafficking or forced labour. ***The Committee requests the Government to provide information on the status of the draft amendment.***

(c) *Diagnosis.* The Committee notes that in its report, the Government refers to various initiatives of the Ministry of Labour's Directorate General of Fundamental Rights and Safety and Health, asking certain ministries, authorities empowered to hear grievances and regional authorities to provide information on the areas and locations where forced labour is practised, with a view to compiling and analysing such data. Some of the information has already been forward to the labour inspectorate so that it can prepare an inspection campaign. The Committee notes that the 2012–13 operational plan devotes a section to the collection of information on forced labour and on diagnosing the situation. The Committee considers that the collection of reliable data on the extent and the characteristics of the different forms of forced labour is essential and constitutes an indispensable prerequisite for the planning and success of government intervention. ***The Committee strongly encourages the Government to conduct a qualitative and quantitative survey to supplement the information already available on forced labour practices with a view to ensuring that the measures to be implemented under the national plan target all the peoples and regions concerned, adjusting them as necessary.***

(d) *Labour inspection.* With reference to the special labour inspection unit set up to combat forced labour (GEIT), the Committee expressed the view that the establishment of a group of inspectors who are specialized in combating forced labour was a positive step. It nonetheless noted with concern that the GEIT appeared not to have the financial resources needed to carry out its tasks, and asked the Government to take the necessary remedial action. The Committee notes that according to the Government, the labour inspectorate has been reinforced by the appointment of 46 new auxiliary inspectors and labour inspectors have been transferred to the regions to enhance the means of action available to regional governments in this domain. The Committee takes note of the statistics of visits undertaken for the inspection of forced labour and observes that they focused on two regions, Lima and Madre de Dios, and that of the 64 visits conducted between 2007 and 2010, none led to the identification of any workers subjected to forced labour. The Government confirms that no fines have been imposed under section 25 of the implementing regulations of the General Labour Inspection Act (Supreme Decree No. 019-2006-TR), pursuant to which, forced labour, whether or not remunerated, and the trafficking or capture of persons for this purpose, are very serious offences against proper employment relationships, punishable by fines.

The Committee expresses its ***concern*** at the absence of any information on the work done by the GEIT and the measures taken by the Government to build the GEIT's capacity for action and at the fact that no offences have been reported, despite surveys having identified some regions where forced labour exists and the processes whereby such practices are imposed. The Committee notes that the 2012–13 operational plan intends to "reactivate and reinforce the GEIT", pointing out that "the GEIT's current problems" need to be assessed and that measures must be promoted to build its capacity for mobility in the field by targeting regions of prevalence and providing it with adequate resources. The Committee recalls the essential role played by labour inspection in combating forced labour. Through the inspection visits carried out by the GEIT it should be possible not only to identify the workers who have fallen victim to forced labour and release them from such situations, but also to gather evidence allowing civil and criminal suits to be brought against the offenders. ***The Committee accordingly expresses the hope that the Government will take the necessary steps to provide the GEIT with the staff and material resources it needs to accomplish its missions throughout the country. Please specify the number of inspections carried out, the cases of forced labour identified and the legal action taken on the offences reported.***

(e) *Awareness-raising and prevention.* The Committee notes the detailed information sent by the Government on the many activities undertaken by the Ministry of Labour and other ministries involved in combating forced labour, to raise awareness about the problems of forced labour and to provide appropriate training. The Committee notes in particular that many of these activities have targeted indigenous communities and the authorities directly responsible for identifying and punishing forced labour practices, such as the labour inspectorate or the police. ***The Committee encourages the Government to continue to develop actions to raise awareness among the population as a whole and among groups that are at risk, as well as activities to train the public authorities responsible for combating forced labour.***

2. *Domestic work in conditions of forced labour.* With reference to its previous comments, the Committee takes due note of the measures taken to step up protection for women in domestic work, particularly the activities conducted to

make them aware of their rights. The Committee also notes that the Ministry for Women and Social Development is drafting a bill to amend the Act on Women in Domestic Work in order to strengthen their rights and particularly to ensure their right to a contract in writing, limited working hours and remuneration equal to the minimum living wage. *The Committee hopes that the bill will soon be adopted in order to reinforce the legal framework applying to domestic workers. It requests the Government to continue to provide information on the measures taken under the National Plan to Combat Forced Labour to protect this group of workers from practices amounting to forced labour, providing them with the assistance they need in order to assert their rights and report any abuse they may have suffered to the competent authorities.*

3. *Trafficking in persons.* The Committee notes the detailed information sent by the Government on the measures taken to combat trafficking in persons in the context of activities conducted and coordinated by the Standing Multisectoral Working Group against Trafficking in Persons (GTMPPT) particularly as regards prevention, training and the protection of victims, and on the action taken by the division to combat trafficking in persons established in the national police force's Criminal Investigation Directorate. The Committee notes in particular that the trafficking in persons hotline that operates around the clock receives a large number of calls (1,268 in 2010 and 1,024 in 2011) and that the professionals who provide assistance and advice to callers succeeded in forwarding a number of complaints to the competent authorities which were followed up by investigations and court proceedings (31 in 2010 and 36 in 2011). Furthermore, thanks to the system of recording statistics of trafficking in persons and similar offences (RETA), which compiles data on complaints, police investigations, locations, incidents and victims of trafficking, targeted supervision and training were carried out. Lastly, figures compiled by the Crime Observatory show that out of 228 complaints filed for trafficking in persons most of the 396 victims are minors (65.3 per cent), female (81.6 per cent) and of Peruvian nationality (92.4 per cent).

*While observing that the full and detailed information sent by the Government on the measures it is taking to combat trafficking in persons bears witness to its commitment to combating this scourge, the Committee encourages the Government to pursue these efforts and requests it to continue to provide information on these issues. It would be grateful if the Government would indicate how the activities undertaken to combat human trafficking are coordinated with the action taken under the National Plan to Combat Forced Labour, and to specify the measures taken to strengthen cooperation between the institutions responsible for combating forced labour practices, particularly the labour inspectorate as well as the police and the prosecuting authorities.*

*Article 25. Effective and strictly applied penal sanctions.* In its previous comments, the Committee observed that forced labour in Peru takes a number of forms (practices akin to slavery or debt bondage inflicted on indigenous populations, trafficking in persons, exploitation of domestic workers) and that the absence of any penal provisions that specifically suppress and punish forced labour appeared to be an obstacle to the initiation of criminal proceedings against offenders. The one exception is trafficking in persons, the constitutive elements being clearly defined in sections 153 and 153A of the Penal Code. The Committee notes with *interest* from the information sent by the Government that a large number of criminal actions were brought for trafficking in persons and penal sanctions were imposed on the offenders. This is not the case of other forms of forced labour, since no offenders appear to have been punished. *In these circumstances, the Committee refers to the comments it made above on the need to supplement the penal legislation in order to criminalize forced labour specifically and define the offences it covers so that the police and prosecuting authorities have a basis in law for conducting proper investigations and bringing judicial actions against the perpetrators of the various forms of forced labour existent in Peru. The Committee recalls in this connection that in order to reduce forced labour, it is essential that the perpetrators of such practices be punished by sufficiently dissuasive penal sanctions, in accordance with Article 25 of the Convention. With regard to trafficking in persons, the Committee requests the Government to continue to provide information on the application in practice of sections 153 and 153A of the Penal Code.*

*The Committee encourages the Government to continue to avail itself of ILO technical assistance.*

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

## 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.* The Committee previously noted that, pursuant to section 142 of the Revised Penal Code, penalties of imprisonment (involving compulsory labour) may be imposed for 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, and pursuant to section 154, for 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. The Committee observed that these 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 peaceful 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 expressed the hope that measures would be taken to amend or repeal sections 142 and 154 of the Revised Penal Code so as to bring legislation into conformity with the Convention.

The Committee notes the Government's statement that a committee composed of experts in criminal law is in the process of studying the amendment to the Revised Penal Code. **Recalling that Article 1(a) of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views, the Committee urges the Government to take the necessary measures to ensure that sections 142 and 154 of the Revised Penal Code are amended or repealed so as to ensure that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requests the Government to provide information on measures taken in this regard with its next report. Pending the amendment of the Revised Penal Code, the Committee again requests the Government to provide information on the application of sections 142 and 154 in practice, including copies of relevant court decisions defining or illustrating the scope of these provisions.**

*Article 1(d). Punishment for having participated in strikes.* The Committee previously noted that pursuant to section 263(g) of the Labor Code, the Secretary of Labor and Employment has discretionary authority to enjoin or force an end to strikes in labour disputes that occur in industries which, in his or her opinion, are "indispensable to the national interest", by "assuming jurisdiction" over the dispute and certifying it for compulsory arbitration. Section 263(g) also provides that the President may determine the industries "indispensable to the national interest" and assume jurisdiction over a labour dispute. 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 provides for sanctions of imprisonment for participation in illegal strikes (section 146).

The Committee notes the statement in a report from the International Trade Union Confederation (ITUC) entitled "Internationally recognized core labour standards in Philippines: Report for the WTO General Council Review of the Trade Policies of Philippines" of 20 and 22 March 2012 that in 2010, the Department of Labor and Employment assumed jurisdiction in seven disputes. The ITUC report also indicates that severe penalties are applied for participation in illegal strikes, including up to three years of imprisonment.

The Committee notes the Government's statement that one of the priorities of the Philippine Labor and Employment Plan 2011–15 is responding to labour market realities through policy reforms and aligning labour legislation with the Philippine Constitution, international treaties and ILO Conventions, in a sound and realistic manner. The Department of Labor and Employment is initiating the review of labour legislation through the Labor Code Review Project, on a tripartite basis and under the auspices of the Joint Congressional Committee on Labor and Employment. This Labor Code Review Project will create a tripartite commission on labour law reform composed of representatives from the National Tripartite Industrial Peace Council (NTIPC) and national and international experts on labour law and social legislation. The Government indicates that through consultations with tripartite support, these reforms will include the amendment of sections 263, 264 and 272 of the Labor Code. In this regard, the Committee notes the Government's indication in its report submitted under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that two bills are undergoing tripartite consultations for submission to the NTIPC, one of which 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 *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 315 of its 2012 General Survey on the fundamental Conventions concerning rights at work, 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. **Referring also to its comments addressed to the Government under Convention No. 87, the Committee requests the Government to take the necessary measures, within the framework of the Labor Code Review Project, to amend the Labor Code so as to ensure that penalties of imprisonment (involving compulsory labour) cannot be imposed for participation in a strike. It requests the Government to provide information on measures taken in this regard in its next report.**

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

## Russian Federation

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1956)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. Strengthening the legal framework.* The Committee previously noted that section 127.1 of the Penal Code prohibits trafficking in persons. It also noted the Government's indication in its 2008 report that a draft text of the Law on combating trafficking in persons had been finalized and submitted to the State Duma of the Russian Federation. In 2010, the Committee expressed the firm hope that immediate steps would be taken towards the adoption of the draft Law on combating trafficking in persons.

The Committee notes with **concern** an absence of information on this point in the Government's report. The Committee also notes that the Committee on Economic, Social and Cultural Rights (CESCR) in its concluding



observations of 1 June 2011, encouraged the Government to adopt the comprehensive draft Law on combating trafficking in persons (E/C.12/RUS/CO/5, paragraph 23). ***The Committee therefore urges the Government to take measures to ensure that the draft Law on combating trafficking in persons is adopted in the near future. It requests the Government to provide information on progress made in this regard in its next report.***

2. *Law enforcement.* In its previous comments, the Committee noted 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 Committee also noted the Government's indication in its 2007 report that detection of trafficking in persons cases had increased sixfold in three years. Furthermore, according to the 2009 ILO Global Report on forced labour, data from the Russian Federation indicated a steady increase in the number of identified persons trafficked for labour exploitation. The Committee therefore noted that, in spite of the legal prohibition of trafficking in persons, it remained a concern in practice, and it requested information on measures to combat this phenomenon.

The Committee notes the Government's indication that, in addition to internal affairs institutions (including special departments dealing with trafficking), staff from the Federal Customs Service and the Federal Security Service have also been assigned to identify cases of trafficking. The Government further indicates that from March to August 2009, operational and preventive measures were carried out by the Ministry of Internal Affairs and the Federal Migration Service to counter illegal migration, including trafficking in persons. The Government states that this included investigations into 750 "job placement" organizations which act as intermediaries in the transfer of persons, including 107 model and marriage agencies and 544 tourist companies involved in the preparation of travel documents and visas.

The Committee also notes the information in the Government's report that between 2004 and 2008, a number of organized criminal groups were identified which had been involved in recruiting Russian citizens to perform sexual services in countries of Western Europe, the Middle East, Africa, Asia and North America. The Government states that more than 25,000 cases of trafficking were identified in addition to over 15,000 perpetrators.

While welcoming the measures undertaken by the Government, the Committee notes an absence of information on the specific number of prosecutions, convictions or penalties applied in relation to the 25,000 trafficking cases that were identified. However, the Committee notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 10 August 2010, expressed concern at the high prevalence of trafficking in the Russian Federation, and that the country is a source, transit and destination country for trafficking in persons. CEDAW further expressed regret regarding the lack of disaggregated data on the number of victims of trafficking, and compensation received as well as statistics on complaints, investigations, prosecutions and penalties imposed on the perpetrators of such crimes (CEDAW/C/USR/CO/7, paragraph 26). Moreover, the Committee notes that the CESCR, in its concluding observations of 1 June 2011, expressed concern, in spite of the steps taken by the Government, about continued reports of trafficking in women and children for sexual exploitation and abuse (E/C.12/RUS/CO/5, paragraph 23). ***The Committee therefore requests the Government to pursue and further strengthen its efforts to prevent, suppress and combat trafficking in persons, and to continue to provide information on the measures taken. In this regard, the Committee requests the Government to take the necessary measures to provide appropriate training to law enforcement officials, border officials and the judiciary in order to strengthen their capacity to combat trafficking in persons. It also requests the Government to provide information on the application in practice of section 127.1 of the Penal Code, particularly the number of investigations, prosecutions, convictions and the penalties applied.***

3. *Protection and reintegration of victims.* The Committee notes the Government's statement that the majority of victims of trafficking in persons are women and girls from socially vulnerable segments of the population. The Government indicates that the Ministry of Health and Social Development, the guardianship authorities, the social services administration, and psychological assistance offices contribute to the social rehabilitation of victims of trafficking, and their subsequent integration into society. The Committee also notes that CEDAW, in its concluding observations of 10 August 2010, urged the Government to take measures to ensure that victims of trafficking are adequately protected and assisted, as well as to undertake efforts for their recovery and social integration (CEDAW/C/USR/CO/7, paragraph 27). ***The Committee requests the Government to continue to provide information on the measures taken to protect and assist the victims of trafficking with a view to facilitating their safe return and subsequent social reintegration.***

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1998)**

*Article 1(a) of the Convention.* *Sanctions involving compulsory labour as a punishment for expressing political or ideological views.* The Committee previously noted the adoption of a law of 24 July 2007 to amend certain legal acts with a view to increasing liability for "extremist activities", which include acts based on political, ideological, racial, national or religious hatred or enmity. It noted, in particular, that under sections 280, 282.1 and 282.2 of the Penal Code, the following acts are punishable with sanctions of imprisonment (which involves compulsory prison labour): public appeal to perform extremist activities; establishment of an extremist group or organization; and participation in such a

group or organization prohibited by a court decision. The Committee requested the Government to provide information on the application in practice of sections 280, 282.1 and 282.2 of the Penal Code, as well as clarification of the term “extremist activities”.

The Committee notes the Government’s statement that to ensure that judicial practice is consistent in cases involving offences of an extremist nature, the Plenum of the Supreme Court adopted Decision No. 11 (28 June 2011) on judicial practice in criminal cases involving offences of an extremist nature. This Decision seeks to provide guidance to ensure uniformity in the judicial procedure related to cases brought under sections 280, 282.1 and 282.2 of the Penal Code. The Committee also notes the Government’s statement that the current legislation of the Russian Federation contains no legal definition of the term “extremist activities”. However, the Government refers to section 1 of the Law on Combating Extremist Activity (Federal Act No. 114-FZ of 25 July 2002 as amended), which states that extremist activity/extremism includes, inter alia: stirring up of social, racial, ethnic or religious discord; propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion; public calls inciting the carrying out of the aforementioned actions or mass dissemination (or the production or storage) of knowingly extremist material; making a public, knowingly false, accusation that an individual holding state office of the Russian Federation has committed actions mentioned in this section while discharging their official duties; and organization and preparation of the aforementioned actions and also incitement of others to commit them.

In this regard, the Committee notes that the Human Rights Committee, in its concluding observations of 25 November 2009, noted that there have been numerous reports that laws on extremism are being used to target organizations and individuals critical of the Government. The Human Rights Committee expressed regret that the definition of “extremist activity” in the Law on Combating Extremist Activity remains vague, allowing for arbitrariness in its application and that the 2006 amendment to this law has made certain forms of defamation of public officials an act of extremism (CCPR/C/RUS/CO/6, paragraph 25). Moreover, the Committee notes that the Committee on Economic, Social and Cultural Rights, in its concluding observations of 1 June 2011, urged the Government to review sections 280, 282.1 and 282.2 of the Penal Code, under which a number of acts are punishable with sanctions of imprisonment together with compulsory labour (E/C.12/RUS/CO/5, paragraph 13).

The Committee recalls that limitations may be imposed by law on individual rights and freedoms in order to ensure respect of the rights and freedoms of others and to meet the requirements of morality, public order and the general welfare in a democratic society, and 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. However, the Committee wishes to emphasize that if such restrictions are formulated in such wide and general terms that they may lead to penalties involving compulsory labour as punishment for the peaceful expression of views or of opposition to the established political, social or economic system, such penalties are not in conformity with the Convention. ***The Committee therefore requests the Government to provide information on the impact of Decision No. 11 of the Plenum of the Supreme Court of 2011 in ensuring that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. In this regard, the Committee strongly encourages the Government to provide, in its next report, information on the application of the laws concerning “extremism” in practice, including information on any prosecutions, convictions and sentences pursuant to sections 280, 282.1 and 282.2 of the Penal Code and the Law on Combating Extremist Activity. Lastly, the Committee requests the Government to provide a copy of Decision No. 11 of the Plenum of the Supreme Court of 2011, with its next report.***

## Saudi Arabia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1978)**

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant workers with regard to the exaction of forced labour.* In its previous comments, the Committee had referred to the vulnerable situation of migrant workers, particularly domestic workers who are excluded from the provisions of the Labour Code, who are often confronted with employment policies such as the visa “sponsorship” system and subjected to abusive employer practices such as the retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse which cause their employment to be transformed into situations that could amount to forced labour. The Committee had requested the Government to provide information on any measures taken to adopt regulations on the employment conditions of migrant domestic workers, pursuant to section 7 of the Labour Code.

The Committee notes the Government’s statement that it is aware of the magnitude of the seriousness of the situation of migrant domestic workers and that it is committed to expediting the process of adopting regulations on the work of this category of workers, especially in light of the Domestic Workers Convention, 2011 (No. 189).

The Committee also notes in the report of the UN Special Rapporteur on violence against women dated 14 April 2009, that “upon arrival, all migrants have their passport and residency permit taken away from them [...] and some find themselves in slave-like conditions”. Moreover, “female domestic workers who are among the most vulnerable to abuse [...] are sometimes locked up in the house with no possibility to make or receive phone calls, or are prohibited from leaving the house at their will” (A/HRC/11/6/Add.3 paragraphs 57 and 59).

Finally 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 Saudi Arabia of 25 and 27 January 2012, entitled “Internationally recognized core labour standards in Saudi Arabia” that migrant workers are forced to work long hours, often all day long with little or no time for rest. Moreover, this ITUC report underlines that a “sponsor” system, also known as *Kafala* system, ties migrant workers to particular employers, limiting their options and freedom. A migrant worker is not allowed to change employer or leave the country without written consent of the employer. Workers cannot leave their job and in case a worker escapes the employer, then she/he cannot search for a new job, nor leave the country. This system in conjunction with the practice of confiscating travel documents and withdrawing wages puts workers under conditions akin to slavery.

The Committee highlights 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, particularly when they are confronted with employment policies such as the visas “sponsorship” system and subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuses. Such practices might cause their employment to be transformed into situations that could amount to forced labour.

*The Committee therefore requests the Government to take the necessary measures to ensure that the regulations on migrant domestic workers will be adopted without delay. It expresses the firm hope that these regulations will include provisions specifically tailored to the difficult circumstances faced by migrant domestic workers and in particular to the problems caused by the visa “sponsorship” system, and will ensure that domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. It requests the Government to provide a copy of these regulations as soon as they are adopted.*

*Article 25. Penalties for the exaction of forced or compulsory labour.* Over a number of years, the Committee has been observing that the Labour Code does not contain any specific provisions prohibiting forced labour. In this regard, it notes the Government’s reiterated explanations referring to section 61 of the Labour Code, which prohibits employers from using workers to exact labour without the payment of wages. The Committee observes, once again however, that section 61 does not contain a general prohibition of forced labour but merely lays down an obligation to remunerate the performance of work within the framework of a normal employment relationship.

The Committee recalls, 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 the effective punishment of perpetrators encourages victims to lodge complaints and has a dissuasive effect (paragraph 140 of 2007 General Survey on forced labour).

*The Committee therefore requests the Government to take the necessary measures with a view to amending the national legislation, so as to provide for the prohibition of forced labour, and to make violations punishable with penal sanctions, which should be really adequate and strictly enforced, as required by Article 25 of the Convention.*

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

## Sierra Leone

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1961)**

*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 noted 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. The Committee notes with *serious concern* the absence of information from the Government on this point. Recalling that the Government has repeatedly indicated since 1964 that this legislation would be amended, the Committee *regrets* to note that no action has been taken in this regard. *Therefore the Committee reiterates the 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.*

## Spain

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1932)**

The Committee notes the statistical data provided by the Government on the inspections carried out by the labour inspection services to verify compliance with labour and social security rights, as well as occupational safety and health regulations, for prisoners performing work in the framework of a special employment relationship.

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Trafficking in persons.* With reference to its earlier comments, the Committee notes the measures taken by the Government to reinforce the legislative and institutional frameworks to combat trafficking in persons. The Committee accordingly notes with *interest* that, further to the adoption of Act No. 5/2010 of 22 June 2010, a title on trafficking in human beings has been incorporated into the Penal Code. Section 177bis determines in detail the elements that constitute trafficking in human beings (both for the imposition of forced labour and services and for sexual exploitation) and establishes penalties of imprisonment of between five and eight years, which may be increased in the event of aggravating circumstances. The Committee also notes the amendment of the legislation on the rights and freedoms of foreign nationals in Spain and their social integration (Act No. 2/2009 of 11 December 2009 and Royal Decree No. 557/2011 of 20 April 2011) so as to encourage cooperation by victims with the investigation authorities, including through the granting of a period of recovery and reflection and the possibility to live and work on the national territory under exceptional circumstances related to their association with judicial procedures or their personal situation. The Government adds that, following the approval in 2009 of the Comprehensive Plan to Combat Trafficking in Human Beings for Sexual Exploitation (2009–12), a second plan of action was drawn up at the end of December 2010 specifically covering trafficking in human beings for labour exploitation. In this context, measures are to be taken to evaluate the problem, as well as for prevention, repression and the protection of victims. The Government also emphasizes the specific role of the labour inspection services which, in the context of their action to combat “irregular economy”, can detect criminal conduct relating to the exploitation of labour, sexual exploitation or trafficking for the purposes of exploitation and, where appropriate, forward for action to the Office of the Public Prosecutor (*Ministerio Fiscal*) a minute setting out the evidence for the violations observed. In this connection, the labour inspectorate has drawn up a list of indicators of trafficking for labour exploitation and is preparing a guide on action in this field by inspectors and deputy inspectors, with the latter having to receive specific training. Finally, the Government provides statistical data on the inspections carried out by the labour inspection services in collaboration with the security forces and institutions in relation to forced labour and the supervision of the “irregular economy”. In 2010, of the 822 inspections that reported situations of forced labour, 364 concerned cases of labour exploitation not involving trafficking, 134 cases of trafficking for sexual exploitation, 124 cases of sexual exploitation not involving trafficking and six cases of trafficking for labour exploitation. The Government specifies that the labour inspection data do not provide a complete picture of the situation and have to be viewed with the data of the Office of the Public Prosecutor and the state security forces, which are the competent institutions for these violations.

The Committee notes all of this information, which bears witness to the Government’s commitment to combat trafficking in persons. *The Committee requests the Government to provide information on the implementation of the Comprehensive Plan to Combat Trafficking in Human Beings for Sexual Exploitation (2009–12), particularly on the evaluation carried out by the inter-ministerial coordination group and on the annual reports drawn up by the group. Please also indicate whether the Comprehensive Plan to Combat Trafficking in Human Beings for Labour Exploitation has been adopted and whether measures have been taken for its implementation. The Committee would also be grateful if the Government would provide statistical data on judicial procedures under new section 177bis of the Penal Code. In this regard, please indicate the measures taken to strengthen the resources and capacities of law enforcement bodies (the labour inspectorate, the security forces, the Office of the Public Prosecutor and the courts) and to ensure effective cooperation between them. Finally, the Committee requests the Government to provide information on the measures adopted for the protection of victims (for example, through the creation of structures to provide them with psychological, medical and social support) and to help them assert their rights. Please indicate the number of victims who have benefited from a period of recovery and reflection, and the number of those who have been granted a residence or work permit, as envisaged by the legislation on the rights and freedoms of foreign nationals in Spain and their social integration.*

2. *Exploitation of vulnerable workers involving forced labour.* The Committee observes that, according to the statistics provided by the Government on the inspections carried out by the labour inspection services in 2010 resulting in the identification of situations which constitute forced labour, the majority of such situations concerned cases of labour exploitation not involving trafficking. *The Committee requests the Government to continue providing information on the action taken by the labour inspection services for the identification of situations of labour exploitation involving forced labour, the penalties imposed and the manner in which such situations are referred to the Office of the Public Prosecutor for the appropriate judicial procedures, in accordance with the respective provisions of the Penal Code. In this regard, the Committee also requests the Government to provide information on the number of prosecutions initiated and the penal sanctions imposed on perpetrators.*

## Sri Lanka

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2003)**

The Committee notes the information supplied by the Government in its report, as well as the comments made by the Lanka Jathika Estate Workers’ Union (LJEWU) on the application of the Convention.

*Article 1(a) of the Convention.* *Penal sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* 1. *Emergency*

*regulations.* In its earlier comments, the Committee referred to the Emergency (Miscellaneous Provisions and Powers) Regulations, adopted in 1989 and revised in 1994, 2000 and 2005, which contained various prohibitions concerning meetings, processions and publications, enforceable with sanctions of imprisonment (involving compulsory prison labour by virtue of section 65 of the Prison Ordinance). The Committee notes that upon request by the President, these emergency regulations expired on 30 August 2011.

2. *Penal Code.* The Committee notes that section 120 of the Penal Code provides that whoever by words, signs or visible representations excites or attempts to excite feelings of disaffection to the President or the Government, or hatred to or contempt of the administration of justice, or excites or attempts to excite people, or attempts to raise discontent or to promote feelings of ill will and hostility between different classes of people, shall be punished with imprisonment for up to two years. ***The Committee requests the Government to provide information on the application of section 120 of the Penal Code in practice in order to ascertain the scope of these provisions and to ensure that they are not used to penalize the expression of political opinions by sanctions of imprisonment involving compulsory labour.***

3. *Prevention of terrorism regulations.* The Committee notes that on 29 August 2011, Prevention of Terrorism Regulations Nos 1–5 were decreed which entered into force following the expiration of the emergency regulations. The Committee notes that section 3 of the Prevention of Terrorism (Proscription of the Liberation Tigers of Tamil Eelam) Regulations No. 1 of 2011 provides a broad definition of punishable activities, including taking part in meetings, promoting, encouraging, supporting, advising, assisting, and causing the dissemination of information, within or outside Sri Lanka, linked to the Sri Lanka Liberation Tigers of Tamil Eelam or any other organization presenting or acting on behalf of the said organization. This definition also covers any person connected or concerned in or reasonably suspected of being connected with or concerned in any of such activities. Any person found guilty of an offence as defined in section 3 shall be sentenced to imprisonment involving compulsory prison labour of up to 20 years (section 4) and any person who conspires to commit, attempt, abet, or engage in any conduct in preparation to commit an offence as defined in section 3 shall be sentenced to imprisonment up to ten years involving compulsory prison labour (section 5). The Committee further notes that the Prevention of Terrorism (Proscription of the Tamil Rehabilitation Organization) Regulations No. 2 of 2011 likewise imposes penalties of imprisonment involving compulsory prison labour of up to 20 years for a range of activities linked to the Tamil Rehabilitation Organization including attending meetings and publication of material (sections 3, 4 and 5).

The Committee also notes that the Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011 provides for measures to continue to detain suspects who had been previously detained under the Emergency Regulations under the Prevention of Terrorism Act (section 2(2)). According to section 3, no person detained shall be released until the expiry of 30 days from 30 August 2011 provided that no detention order is issued pursuant to the Prevention of Terrorism Act or any other Act in force.

The Committee further notes that the Prevention of Terrorism (Surrendees Care and Rehabilitation) Regulations No. 5 of 2011 requires that any person who surrendered for any offence under the Prevention of Terrorism Act, or has surrendered in terms of the emergency regulation previously in force, shall be assigned to a “Protective Accommodation and Rehabilitation Centre” and provided with appropriate vocational, technical or other training. The surrendee may be kept for a period not exceeding ten months, which may be extended for a further 12 months.

The Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour, including compulsory prison labour, as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee points out 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. The Committee also recalls that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to or call for violent means to these ends. The Committee would also like to point out that, if counter-terrorism legislation responds to the legitimate need to protect the security of the public against the use of violence, it can nevertheless become a means of political coercion and a means of punishing the peaceful exercise of civil rights and liberties, such as the freedom of expression and the right to organize. The Convention protects these rights and liberties against repression by means of sanctions involving compulsory work, and the limits which may be imposed on them by law need to be properly addressed. In this regard, the Committee refers also to the explanations in paragraphs 302–307 of its 2012 General Survey on the fundamental Conventions concerning rights at work.

***Considering the broad definition of terrorist activities in the Prevention of Terrorism Regulations Nos 1 and 2, the Committee requests the Government to take the necessary measures to ensure that no sanctions involving compulsory labour can be imposed on those holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee also requests the Government to take the necessary measures to ensure that all persons condemned with prison sentences under the emergency regulations for expressing political views or views ideologically opposed to the established political, social or economic system are not subject to compulsory prison labour. It further requests the Government to ensure that no sanctions involving compulsory labour can be imposed on surrendees in Protective Accommodation and Rehabilitation Centres for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee***

*requests the Government to provide information in its next report on the measures taken to bring its legislation and practice into conformity with the Convention in this respect.*

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

## Sudan

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1957)**

*Articles 1(1) and 2(1) of the Convention. Abolition of forced labour practices.* For many years, the Committee noted the existence of the practices of abduction and forced labour exploitation, which affected thousands of women and children in regions of the country where an armed conflict was under way. The Committee repeatedly pointed out that such situations constituted 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 also recalled that this case had been discussed on numerous occasions by the Conference Committee on the Application of Standards. 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 that steps had been taken towards the full implementation of the Comprehensive Peace Agreement of 2005. However, the Conference Committee observed that there was no verifiable evidence that forced labour had been completely eradicated in practice and that there were no up-to-date statistics concerning the activities of the Committee for the Eradication of Abduction of Women and Children (CEAWC) showing the number of cases of identification of victims and reunification with their families. The Committee of Experts subsequently noted the report of the independent expert on the situation of human rights in the Sudan (A/HRC/15/CRP.1) for the period from 1 May to 31 August 2010 indicating that while the Government continued to take steps towards democratic transformation, the general human rights situation in Sudan had deteriorated. The Committee further noted the allegations from the International Trade Union Confederation (ITUC) of August 2010 that there continued to be serious problems with forced labour as well as compensation for victims of forced labour. The ITUC indicated that the practice of abduction and forced labour exploitation was still in place affecting thousands of women and children in armed conflict areas.

In this regard, the Committee noted the Government's statement that it was committed to completely eradicating the phenomenon of abductions and to providing continued support to the CEAWC. Moreover, the Government stated that abductions had stopped, and that this fact had been confirmed by the Dinka Chiefs Committee (DCC). However, the Committee noted that this statement was in contradiction with other reliable sources of information, including from United Nations bodies, the representative organizations of workers and non-governmental organizations. Therefore, while noting the Government's renewed commitment to resolving the problem, the Committee urged the Government to redouble its efforts in order to completely eradicate forced labour practices. It expressed the firm hope that the Government would continue to provide detailed information on the liberation and reunification process, supplying updated and reliable statistics supported by CEAWC reports.

The Committee notes the Government's statement in its report of November 2011 that it is fully committed to the implementation of ILO Conventions. The Government states that it has adopted dialogue as the approach to resolving conflicts within the country. In this regard, the Committee notes the Government's description of developments relating to the cessation of hostilities in the country, such as the continued implementation of the Comprehensive Peace Agreement of 2005, the referendum and subsequent secession of southern Sudan to create South Sudan, the signing of an agreement in the east of the country which ended the armed conflict in this part of the country and the signing of the Doha Document for Peace in Darfur between the Government and 20 armed movements in the region. With regard to cases of abduction, the Government indicates that psychological and social support, education and training opportunities on skills were provided, and that training programmes were organized for 78 social workers with regard to the tracking of children and family reunion. The Committee also notes the Government's statement that the majority of abduction cases which were recorded in the past occurred among tribes in the regions where there was an armed conflict, including the area which is now South Sudan, or in the regions subject to joint administration. In this regard, the Committee observes the information from various United Nations documents indicating that hostilities and accompanying human rights violations, including abductions, continue in parts of Sudan, particularly in Darfur and in Southern Kordofan.

With regard to Darfur, the Committee notes the information in the report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur (UNAMID) of 17 April 2012 that the signatory parties to the Doha Document for Peace in Darfur continued to work towards the implementation of its provisions. However, this report indicates that, between December 2011 and April 2012, clashes between Government and movement forces occurred sporadically, particularly in Northern and Central Darfur (S/2012/231, paragraphs 3 and 18). This report indicates that the human rights situation in Darfur deteriorated during this period, and ten incidents of kidnappings involving local residents were reported (paragraphs 29 and 40). Moreover, this report indicates that UNAMID documented three cases of abductions (paragraph 43). In addition, referring to its comments made under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee observes that according to the report of the Secretary-General on children and armed conflict of 26 April 2012, the country task forces on monitoring and reporting documented 45 cases of recruitment

and use of children for armed conflict in Darfur in 2011, the majority of these incidents taking place in Government-controlled areas (A/66/782, paragraph 109).

With regard to Southern Kordofan, the Committee notes the information in the 13th periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan entitled “Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011” that the Human Rights Component of the United Nations Mission to Sudan received several reports of alleged abductions or disappearances of people in the region. This report indicates that while precise figures are unknown, the victims were reportedly suspected supporters and affiliates of the Sudan People’s Liberation Movement/Army (paragraph 30). Moreover, with regard to the Abyei area, the Committee notes that the information from the report of the Secretary-General on the situation in Abyei of 24 March 2012 that the security situation remained tense and highly unpredictable owing to the continued presence of unauthorized armed forces in the area and that significant concern remained regarding the protection of civilians in Abyei (S/2012/358, paragraphs 2 and 23). This report also indicates that there had been no further developments with regard to the operationalization of human rights monitoring in the Abyei area (paragraph 24). Lastly, referring to the application of Convention No. 182, the Committee notes that according to the report of the Secretary-General on children and armed conflict of 26 April 2012, cases of recruitment and use of children in armed conflict significantly increased in Abyei, Blue Nile and Southern Kordofan in 2011, including allegations of abductions of children with the aim of forcefully recruiting them (A/66/782, paragraph 114).

***The Committee therefore urges the Government to redouble its efforts in order to ensure the complete eradication of any forced labour practices in the country and, in particular, to ensure the resolution of all cases of abductions in the country and to ensure the victims’ right to be reunified with their families. Furthermore, the Committee urges the Government to strengthen its efforts to guarantee a climate of stability and legal security in which recourse to forced labour cannot be legitimized or go unpunished. In this regard, 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 impunity, which would help to ensure the full observance of the Convention. Lastly, noting the Government’s request for the 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 exaction of forced or compulsory labour.* The Committee previously noted the Criminal Code provisions punishing the offence of abduction with penalties of imprisonment. However, the Committee also 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, had been requested by all the tribes concerned, including the DCC, not to resort to legal action, unless the amicable efforts of the tribes were not successful. The Government stated that within the context of the comprehensive peace process, an argument could be made for not pursuing prosecutions against those responsible for abductions and forced labour in the spirit of national reconciliation. Moreover, the Committee noted the Government’s statement 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 Committee noted that the United Nations Security Council Resolution No. 1881 (2009) emphasized the need to bring to justice the perpetrators of human rights violations and urged the Government of Sudan to comply with its obligations in this respect. The Committee also noted that the report of the Special Rapporteur on the situation of human rights in the Sudan (A/HRC/11/14, June 2009) reiterated the recommendation that all allegations of violations of human rights and international humanitarian law be duly investigated and that perpetrators be promptly brought to justice (paragraph 92(d)). Moreover, the Committee subsequently took note of the report of the independent expert on the situation of human rights in Sudan (A/HRC/15/CRP.1) for the period from 1 May to 31 August 2010 which recommended that the Government “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”. The Committee further noted that the Conference Committee on the Application of Standards, in June 2010, noted with concern that there was a lack of accountability of perpetrators and strongly urged the Government to pursue its efforts, including through the CEAWC, to ensure the full application of the Convention, both in law and in practice. In addition, the Committee noted the allegations of the ITUC that the Government continued to refuse to punish forced labour offenders, insisting that such cases would be settled through the traditional community chief mediation process. In this regard, the ITUC indicated that there was no documented evidence of such an informal community mediation process having yielded positive results. The ITUC considered that the Government should strengthen the work of the CEAWC in terms of prosecution of perpetrators of abduction and forced labour, as a number of perpetrators remained unwilling to cooperate.

The Committee notes the Government’s statement in its most recent report that in 2010 the Advisory Council for Human Rights was entrusted to follow-up on the issue of women and children’s abduction, and that this was carried out by the CEAWC. The Government states that the cases of abduction which occurred outside of the region that is now South Sudan or the jointly administered territories were resolved through direct contacts through a joint committee made up of

the Government and UNICEF. The Government also indicates that, at present, gathering statistics on this topic is not possible.

The Committee notes with *regret* the lack of up-to-date information on any investigations and prosecutions related to abductions and forced labour in the country or on the activities of the CEAWC. However, with regard to the situation in Darfur, the Committee notes that, according to the information in the report of the Secretary-General on UNAMID of 17 April 2012, the Sudanese Minister of Justice issued a decree in January 2012 to appoint the Prosecutor for the Special Court for Darfur, with jurisdiction over gross violations of human rights and serious violations of international humanitarian laws since 2003 (S/2012/231, paragraph 83). The Committee also notes that the 13th periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan entitled “Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan” of August 2011 recommends that an independent, thorough and objective inquiry be conducted into alleged violations of international human rights and humanitarian law that occurred during the hostilities of Southern Kordofan, with a view to holding perpetrators accountable. This report recommends that immunities for members of the military and security forces be lifted to allow for prosecutions in compliance with due process and fair trial standards (page 12).

The Committee once again recalls 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 therefore once again urges the Government to take the necessary measures to ensure that legal proceedings are instituted against perpetrators of abductions and that penal sanctions be imposed on persons convicted of having exacted forced labour, as required by the Convention. In this regard, the Committee requests the Government to provide information on measures taken through the CEAWC and the Special Court for Darfur regarding abductions related to the exaction of forced labour. The Committee also requests the Government to take the necessary measures to ensure that information is made available 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), including the number of investigations, prosecutions, convictions and penalties imposed.***

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1970)***

*Article 1(a) of the Convention. Punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* The Committee previously noted that penalties of imprisonment (involving an obligation to perform prison labour) could be imposed under sections 50, 66 and 69 of the Criminal Act (committing an act with the intention of destabilizing the constitutional system, publication of false news with the intention of harming the prestige of the State and committing an act intended to disturb public peace and tranquillity). The Committee also noted the Government’s indication that the Sudanese Parliament was engaged in revising the whole body of the Sudanese legislation in order to bring it into conformity with the Comprehensive Peace Agreement and the Interim National Constitution of 2005. However, the Committee noted that the Special Rapporteur on the situation of human rights in Sudan noted that one of the amendments to the 1991 Criminal Procedures Act, adopted on 20 May 2009, gives powers to state governors or commissioners to issue orders prohibiting or restricting the organization of public meetings. The Special Rapporteur recommended that the Government ensure that human rights defenders, humanitarian workers, parliamentarians, members of political opposition, journalists and other civil society members were not arbitrarily detained or ill-treated by State agents on account of their work, opinions or peaceful assembly (A/HRC/11/14, June 2009). In this regard, the Committee recalled the importance for the effective respect of the Convention of legal guarantees regarding freedom of assembly, expression, demonstration and association and expressed the hope that, as a result of the legislative reform, the national criminal and labour legislation would be brought into conformity with the Convention.

The Committee notes the Government’s statement that, at present, a permanent Constitution is being formulated, by virtue of which the national legislation shall be reviewed. The Committee also notes the Government’s statement in its report to the Human Rights Council for the Universal Periodic Review of 11 March 2011 that the Press and Publications Act was adopted in 2009 to regulate freedom of expression through the press and guarantee broad freedom of expression and access to information (A/HRC/WG.6/11/SDN/1, paragraph 40). However, the Committee notes that, according to the information in the compilation prepared by the Office of the High Commissioner of Human Rights for the Human Rights Council’s Universal Periodic Review, the United Nations Mission in Sudan (UNMIS) noted that the realization of the right to freedom of expression, association and assembly had been consistently frustrated through the application of the 2010 National Security Act, the 2009 Press and Publication Act and the 1991 Criminal Procedure Act. The Committee also notes the information in the UN Country Team Country Analysis of February 2012 that the Criminal Act of 1991 was amended in 2009, but observes that these amendments did not amend or repeal sections 50, 66 and 69 of the Criminal Act. Lastly, the Committee notes the information in the 13th periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan entitled “Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011” that in July 2011, 16 civilians were arrested outside of the UNMIS headquarters in Khartoum while attempting to deliver a petition to the UNMIS Special



Representative of the Secretary-General and were subsequently charged with disturbance of public peace under section 69 of the Criminal Act of 1991 (paragraph 42).

In this regard, the Committee recalls that *Article 1(a)* of the Convention prohibits all recourse to forced or compulsory labour, including compulsory prison labour, as a means of political coercion or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to or call for violent means to these ends. ***Therefore, the Committee once again urges the Government to take the necessary measures to ensure that sections 50, 66 and 69 of the Criminal Act are repealed or amended so that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requests the Government to provide information on the progress made in this regard, including through the review of national legislation following the adoption of a permanent Constitution. Pending the adoption of such amendments, the Committee requests the Government to provide information on the application of sections 50, 66 and 69 of the Criminal Act in practice. Lastly, the Committee once again requests the Government to provide copies of the amendments to the Criminal Procedures Act of 1991 of 20 May 2009.***

*Article 1(d). Punishment for having participated in strikes.* For a number of years, the Committee has been referring to sections 112, 119 and 120 of the 1997 Labour Code, which specify that labour disputes which cannot be settled amicably within three weeks will be automatically referred to an arbitration body whose decision will be final and without appeal. Section 126(2) of the Labour Code provides for a punishment of imprisonment (which involves compulsory prison labour) for a period of up to six months in cases of violation or refusal to apply the provisions of the Labour Code. While noting the Government's indication that these provisions of the Labour Code are aimed at the observance of arbitration body decisions, the Committee observed that such provisions could also be applied to workers in a manner which exposes them to sanctions involving compulsory labour. Nonetheless, the Committee also noted the Government's indication that a new draft Labour Code had been finalized and prepared for submission to the competent authorities for adoption.

The Committee notes the Government's statement that the new Labour Code has yet to be adopted. In this regard, the Committee must once again recall 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. The Committee refers in this connection to the explanations contained in paragraph 315 of its 2012 General Survey on the fundamental Conventions concerning rights at work, in which it has considered that, regardless of the legality of the strike action, both in legislation and in practice, no sanctions involving compulsory labour should be imposed for the mere fact of organizing or peacefully participating in strikes. ***The Committee therefore requests the Government to take the necessary measures to ensure that the draft Labour Code does not contain provisions providing for imprisonment (involving compulsory labour) as a punishment for the peaceful participation in strikes. It expresses the hope that the new Labour Code will be adopted in the near future, and requests the Government to provide a copy, once adopted.***

*Compulsory prison labour.* Following its previous comments, the Committee notes the Government's statement that an Act concerning the regulation of prisons and the treatment of prisoners was adopted in 2010. The Government indicates that section 25 of this Act of 2010 specifies that any convicted prisoner shall be required to work in productive work. ***The Committee requests the Government to provide a copy of the 2010 Act concerning the regulation of prisons and the treatment of prisoners, with its next report.***

## Syrian Arab Republic

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)**

*Article 1(a), (c) and (d) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views, for breaches of labour discipline and for participation in strikes.* Over a number of years, the Committee has been referring to certain provisions of the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act, under which prison sentences involving compulsory labour can be imposed as a means of political coercion or as a punishment for expressing views opposed to the established political system, and as a punishment for breaches of labour discipline and for the participation in strikes. The Committee previously noted the Government's indication that it is endeavouring to resolve the problems identified in the Committee's comments by way of the adoption of the new Penal Code, which was going through various legal channels and phases of adoption.

The Committee previously noted, in this regard, the statement of the President of the UN Security Council of 3 August 2011 (6598th Meeting), in which the Security Council expressed its grave concern at the deteriorating situation in the Syrian Arab Republic, condemned the widespread violations of human rights and the use of force against peaceful protesters, and stressed that the only solution to the crisis was through a political process that addressed the legitimate concerns of the population and allowed the exercise of the freedoms of expression and assembly.

The Committee notes that, more recently, the UN Human Rights Council called on the Government to put an end to all attacks against journalists, fully respect freedom of expression in line with international obligations, allow independent and international media to operate in the Syrian Arab Republic without restrictions, harassment, intimidation or risk to life, and ensure adequate protection for journalists (A/HRC/19/L.38/Rev.1, 22 March 2012).

In the light of the above, the Committee once again expresses its *deep concern* regarding the current human rights situation in the country and recalls that restrictions on fundamental rights and liberties may have a bearing on the application of the Convention, if such measures are enforced by sanctions involving compulsory labour.

The Committee recalls once again 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, and that sanctions involving compulsory labour are not in conformity with the Convention if they enforce a prohibition of the peaceful expression of views that are critical of government policy and the established political system, whether the prohibition is imposed by law or by an administrative decision (see General Survey on the fundamental Conventions concerning rights at work, 2012, paragraphs 302–304 and 313–315).

*The Committee urges the Government to take all the necessary measures to ensure that persons who express views or an opposition to the established political, social or economic system, benefit from the protection accorded by the Convention and that in any case penal sanctions involving compulsory labour cannot be imposed on them. In this connection, the Committee expresses the firm hope that, a new Penal Code will be adopted in the near future and that persons convicted for activities coming under the purview of the Convention, and, in particular, persons convicted under the provisions of the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act will not be sentenced to imprisonment involving an obligation to work.*

## United Republic of Tanzania

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1962)**

*Articles 1(1), and 2(1) of the Convention.* 1. *Imposition of compulsory labour for purposes of economic development.* For many years, the Committee has been commenting on serious discrepancies between national law and practice and the provisions of the Convention. The Committee has referred in this connection to the following legislative provisions:

- article 25(1) of the Constitution, which provides that every person has the duty to participate in lawful and productive work and to strive to attain the individual and group production targets required or set by law; article 25(3)(d), of the Constitution, which provides that no work shall be considered as forced labour if such work forms part of (i) compulsory national service in accordance with the law, or (ii) the national endeavour at the mobilization of human resources for the enhancement of the society and the national economy and to ensure development and national productivity;
- the Local Government (District Authorities) Act, 1982, the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Government Finances Act, 1982, under which compulsory labour may be imposed, inter alia, by the administrative authority for purposes of economic development; and
- several by-laws adopted between 1988 and 1992 under section 148 of the Local Government (District Authorities) Act, 1982, entitled “self-help and community development”, “nation-building” and “enforcement of human resources deployment”, which provide for an obligation to work.

In this regard, the Committee expressed its concern at the institutionalized and systematic compulsion to work established in law at all levels, in the National Constitution, Acts of Parliament and District by-laws, in contradiction with the Convention. However, the Committee also noted the adoption of the Employment and Labour Relations Act, 2004, which introduced a provision prohibiting the exaction of forced labour, pursuant to section 6(1). Moreover, the Government indicated that the Law Reform Commission was carrying out legal research on laws that required amendment or repeal to reflect the current economic, social and political arrangements, including laws which were not in conformity with the Convention.

The Committee notes the Government’s statement that it hopes to take measures to bring the provisions of the relevant legislation into conformity with the Convention. The Government indicates that it would like to avail itself of technical assistance in developing public-awareness strategies for both authorities involved in the administration of these laws and the legislative bodies. *Recalling that the Committee has been raising this issue for more than two decades, the Committee requests the Government to pursue its efforts to repeal or amend the abovementioned provisions which permit compulsory labour to be imposed by an administrative authority or which provide for an obligation to work for the purposes of “self-help and community development”, “nation-building” and “enforcement of human resources deployment”. It requests the Government to provide information on progress made in this regard. Moreover, the Committee requests the Government to provide information on the manner in which these provisions are applied in practice, in its next report.*

2. *Freedom of career military personnel to leave the service.* The Committee previously noted that pursuant to section 35 of the National Defence Act, 1966, officers or other members of career military personnel may be released at any time for such reasons and on such conditions as may be prescribed by Defence Forces Regulations. In this regard, the Government indicated that the reasons and conditions for resignation from active service, as provided for in the Regulations, were: retirement age; sickness; service completed; and release of a female service person on marriage. The Committee therefore observed that section 35 did not appear to allow career military servicemen to resign at their own request, other than for one of the specific reasons listed. However, the Committee noted the Government's indication that the National Defence Act, 1966, as well as the Defence Forces Regulations, had been listed among the identified laws to be addressed by the Task Force on the Labour Law Reform, with a view to making appropriate recommendations to the Government.

The Committee once again recalls that career military personnel who have voluntarily entered into an engagement should have the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice. ***The Committee requests the Government to provide information on the measures taken or envisaged, including in the context of the ongoing Labour Law Reform, to ensure that career members of the armed forces enjoy fully the right to leave their service in peacetime at their own request, within a reasonable period, either at specified intervals, or with previous notice. In this regard, the Committee requests the Government to provide information on the application in practice of section 35 of the National Defence Act, 1966, and its relevant regulations, including in particular, the number of resignations accepted, or refused, over a specified period, as well as the reasons for refusal. The Committee also requests the Government to provide a copy of the Defence Forces Regulations, with its next report.***

3. *Imposition of labour for public purposes.* In its earlier comments, the Committee referred to by-laws issued by local government authorities in 1984 and 1986 under sections 13 and 15 of the Local Government Finances Act, 1982, which imposed "development levies" on every resident under the menace of penal sanctions of fines or imprisonment. The Committee requested the Government to take measures to ensure that jobless persons unable to pay are not obliged, through the imposition of a cash levy, to engage in compulsory public works. In this regard, the Government indicated that the "development levies" which were imposed under these provisions had been waived out, and that the Local Government Finances Act, 1982 had been listed among the identified laws to be addressed by the Task Force on the Labour Law Reform, with a view to making appropriate recommendations to the Government.

The Committee takes due note of the Government's statement that the authorities took the decision to abolish development levies which were being implemented under the Local Governance Finance Act. The Committee also notes the Government's indication that several pieces of legislation have been repealed through the first phase of the Labour Law Reform, and that the Local Governance Finance Act remains on the list of laws to be addressed by the Task Force. ***The Committee therefore requests the Government to take the necessary measures, within the framework of the Task Force on Labour Law Reform, to bring the Local Governance Finance Act into conformity with the Convention and the indicated practice. It requests the Government to provide information on the progress made in this regard in its next report.***

***To address these issues, the Committee encourages the Government to pursue its efforts to avail itself of ILO technical assistance to bring its legislation into conformity with the Convention.***

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

## Thailand

### **Forced Labour Convention, 1930 (No. 29) (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:

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Prevention and protection measures, law enforcement.* The Committee notes with interest the adoption of the new Anti-Trafficking in Persons Act B.E. 2551 (2008), which repeals the Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997) and provides for a broad definition of "exploitation" to cover sexual exploitation, production and distribution of pornography, other forms of sexual exploitation, slavery, forced begging, forced labour, or other similar forms of exploitation. The Committee notes, in particular, the information on the mechanisms and special procedures developed by the Government, under the new Act, to ensure the effective prevention of human trafficking as well as protection of victims noting, in particular, the establishment of the Operational Guidelines on the Prevention and Suppression of Trafficking for Labour Purposes, and Assistance and Protection for Trafficked Persons. The Committee further notes that under the new Act, victims may claim compensation from the offenders for the damages caused by human trafficking.

The Committee also noted the statistics provided by the Government on the number of cases related to human trafficking during the period of June 2009 and June 2010, as well as the information on the activities of the Anti-Human Trafficking Division (AHTD), which has been established within the Royal Thai police and is, since 2009, the main body responsible for the prevention and investigation of human trafficking crimes. Finally, the Committee notes the information on the activities of the Centre against International Trafficking under the Office of the Attorney-General. The Committee considered that the detailed information provided by the Government in 2011 demonstrated the significant efforts it has made in the fight against trafficking.

***The Committee once again asks the Government to continue to provide information, in particular on the application in practice of the Anti-Trafficking in Persons Act B.E. 2551 (2008), providing copies of further court decisions concerning***

***trafficking and forced labour cases, as well as information on any difficulties encountered by the competent authorities in identifying victims and in initiating legal proceedings.***

*Trafficking in persons for the purpose of exploitation. Migrant workers.* In its earlier comments, the Committee noted the observations on the application of the Convention by Thailand, made by the International Confederation of Free Trade Unions (ICFTU) – now the International Trade Union Confederation (ITUC). In its communication dated 31 August 2006, the ICFTU expressed its concern about the persistence of trafficking in persons from and into Thailand and referred to a report published by the UN Office on Drugs and Crime (April 2006), in which Thailand had been listed in the group of countries which had a very high level of trafficking, as a country of destination, origin and transit. According to the report, Cambodian and Lao women and girls were trafficked into Thailand for factory and domestic work and the sex trade; Burmese, Cambodian and Lao men were trafficked into Thailand for forced labour in such sectors as construction, agriculture and in particular the fishing industry.

In its reply to the observations submitted by the ICFTU, the Government indicated that the new Anti-Trafficking in Persons Act B.E. 2551 (2008) addresses both female, child and male victims equally, providing for heavier penalties on offenders involved in human trafficking, as well as victim protection and a fund to be established to support the prevention and suppression of human trafficking. As regards bonded and forced labour in particular, the Government indicated that, together with the new Act, provisions of the Labour Protection Act (B.E. 2541) concerning overtime work and minimum wages (such as sections 70, 90, 24, 25 and 144) can also serve as tools to prevent bonded and forced labour.

The Government further indicated that, as regards trafficking and forced labour, its practices on labour inspection and labour protection include coordination with relevant government agencies, NGOs, international organizations and Thai embassies overseas to ensure victims' protection, recovery and reintegration to prevent them from being re-trafficked. Finally, it informed that repatriation programmes have been arranged with Cambodia, the Lao People's Democratic Republic, Myanmar and the Yunnan Province of China in order to develop effective and safe repatriation procedures.

As regards statistics and documentation on the problems of trafficking and exploitation for forced labour of workers from Myanmar on board Thai vessels and in Thai ports, the Government informed that during the fiscal year 2005–6, 15 complaints concerning workers on board Thai fishing vessels were submitted to the Department of Labour Protection and Welfare (DLPW), two of which were categorized as forced labour cases.

The Committee noted the addendum to the report of the United Nations Special Rapporteur on the human rights of migrants, presented at the 17th Session of the UN Human Rights Council on 17 May 2011 (A/HRC/17/33/Add.1), which contains communications to and from governments. In the communications addressed to the Government of Thailand, the Special Rapporteur expressed its concern regarding violations of the human rights of migrants in the country, in particular as regards the negative impact of the National Verification (NV) registration process for migrant workers. The Committee noted that, according to the report, approximately 300,000 migrant workers who failed to enter the NV process by the extended deadline of 31 March 2010 and an estimated 1 million unregistered migrant workers who were ineligible for the NV process are deemed as migrants with irregular status and particularly vulnerable to arbitrary arrest, violence and exploitation. According to the report, unregistered migrant workers may be asked to pay bribes ranging from 200 to 8,000 baht (THB) or more to the police in exchange for their freedom, either when stopped by the police or when in police custody.

The Committee further noted the information in the report concerning the Prime Minister's order of 2 June 2010, issued to set up a Special Centre to Suppress, Arrest and Prosecute Alien Workers Who Are Working Underground (No. 125/1223), according to which the Centre is mandated to suppress, arrest and prosecute alien workers who illegally enter the country. The Special Rapporteur expressed particular concern about the pattern of arbitrary arrest, violence and exploitation of migrants, which was exacerbated by the mentioned order and notes that an increasing number of cases of systematic abuse of official powers have been reported, "including the 'sale' of irregular migrants to various brokers who then transfer the migrants back to their worksites for fees or who 'resell' or traffic the individuals to various employers in the fishing and domestic industries". Finally, the Special Rapporteur expressed concern about information received suggesting that arrested migrant workers from Myanmar were deported to their country of origin by boat through informal checkpoints controlled by the Democratic Karen Buddhist Army (DKBA) and that the DKBA demanded fees from the deportees in exchange for their freedom. According to the report, migrants who cannot afford the fees imposed are subject to beating and forced labour.

Corroborating the communications of the UN Special Rapporteur, the Committee noted the report of the International Organization for Migration (IOM) on Trafficking of Fishermen in Thailand (14 January 2011), which refers to violations on the human rights of migrant workers in Thailand, in particular in the fishing sector. In its report the IOM expressed concern about the conditions under which migrant workers are hired to work in the Thai fishing industry, with labour recruitment processes that remain largely informal, mostly on the basis of verbal agreements, often leading to abuse and fostering human trafficking. In addition, the IOM drew attention to the fact that many fishermen are "sold" to fishing boat owners by brokers, having to work for long periods without receiving any wages in order to repay their debts. The IOM further noted that, despite the degrading working conditions, fishermen often have no alternative but being subject to them, since fishing boats tend to be offshore for long periods of time, preventing workers to leave or escape. According to the report, migrant fishermen, who are usually undocumented and unregistered, are often held on boats indefinitely, working and being forcibly transferred between fishing boats in case one boat needs to return to shore, under threats of being reported to immigration authorities.

While noting this information, and considering the seriousness of the facts abovementioned, the Committee recalled that, despite the Government's efforts in preventing, combating and suppressing trafficking in persons, the uncertainty surrounding the legal status of migrant workers, in particular those employed in the fishing sector, put them in an extremely vulnerable situation. Such vulnerability could lead to abuse and practices likely to undermine the protection provided by the Convention. Moreover, the itinerant nature of this type of work and the long periods of time spent away from shore hampers the identification of migrant fishermen victims of trafficking and working under forced labour conditions.

***The Committee therefore once again requests the Government to take effective measures to protect migrant workers, particularly those in the fishing industry, with a view to the complete elimination of the exaction of forced labour from this category of workers. It also once again requests the Government to take the necessary measures to further strengthen its law enforcement mechanisms, including measures to enforce anti-trafficking laws against those who target migrant fishermen and that such measures address the problems identified in the abovementioned reports. The Committee hopes that the Government will provide, in its next report, detailed information about the progress of such measures, including not only numbers of prosecutions and convictions, but the specific criminal penalties which have actually been imposed on employers of migrant fishermen convicted under the new Anti-Trafficking Act. The Committee once again requests the Government to provide information on the application in practice of the above Prime Minister's order of 2 June 2010, issued to set up a***

*Special Centre to Suppress, Arrest and Prosecute Alien Workers Who Are Working Underground (No. 125/1223). In this connection and bearing in mind the seriousness of the situation, the Committee once again requests the Government to provide information on the measures taken to prevent the exploitation of migrant workers and to ensure protection of their rights, regardless of their legal status.*

*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)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views. Criminal Code and the Computer Crimes Act.* The Committee notes that section 112 of the Criminal Code states that whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to 15 years. The Committee also notes that sections 14 and 15 of the Computer Crimes Act of 2007 prohibit the use of a computer to commit an offence under the provisions of the Criminal Code concerning national security (including section 112 of the Criminal Code), with a possible sanction of five years imprisonment. Moreover, the Committee notes that, according to the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, of 4 June 2012, there has been a recent increase in *lèse majesté* cases pursued by the police and the courts. In this regard, the Special Rapporteur urged the Government to hold broad-based public consultations to amend its criminal laws on *lèse majesté*, particularly section 112 of the Criminal Code and the Computer Crimes Act (A/HRC/20/17 paragraph 20). The Committee further notes the information in a compilation prepared by the Office of the High Commissioner for Human Rights for the Human Rights Council's Universal Periodic Review that the UN Country Team in Thailand indicated that a number of individuals have received lengthy prison sentences for breaching the *lèse majesté* laws.

In this regard, the Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour, including compulsory prison labour as a punishment for holding or expressing political views or of opposition to the established political, social or economic system. ***The Committee therefore urges the Government to take the necessary measures to repeal or amend section 112 of the Criminal Code and sections 14 and 15 of the Computer Crimes Act, so that persons who peacefully express certain political views cannot be sentenced to a term of imprisonment which involves compulsory labour. The Committee requests the Government to provide information on measures taken in this regard, in its next report.***

*Article 1(c). Sanctions involving compulsory labour as a means of labour discipline.* The Committee previously noted that pursuant to sections 131–133 of the Labour Relations Act BE 2518 (1975), 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 Act. It observed that such provisions were contrary to the provisions of the Convention, as it provided for sanctions involving compulsory labour as a means of labour discipline. However, the Committee noted the Government's statement that the Ministry of Labour was trying to take measures to bring the Labour Relations Act into closer conformity with the Convention.

The Committee notes the Government's statement that there has been significant progress concerning the revision of the Labour Relations Act. The Government indicates that the Committee on the Revision of Labour Relations Laws has considered a draft revised version of the Act, which proposes repealing sections 131–133, in order to achieve compliance with the Convention. The Government further indicates that this draft version has been submitted to the Council of State for further consideration. ***The Committee requests the Government to take the necessary measures to ensure that the draft revision of the Labour Relations Act, repealing sections 131–133, is adopted in the near future, to ensure that sanctions of imprisonment (involving compulsory labour) cannot be imposed as a means of labour discipline. It requests the Government to continue to provide information on progress made in this regard, in its next report.***

*Article 1(d). Sanctions involving compulsory labour as a punishment for having participated in strikes.* The Committee previously noted that pursuant to provisions of the Labour Relations Act penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes, if: (i) 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 (pursuant to section 140 read in conjunction with section 35(2)); and (ii) 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 (pursuant to section 139 read in conjunction with section 34(5)). The Committee also noted that the State Enterprise Labour Relations Act BE 2543 (2000) (SELRA) prohibits strikes in state enterprises (section 33), and that violation of this prohibition is 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). However, the Committee noted the Government's indication that the Committee on the Revision of Labour Relations Laws was going to examine the feasibility of revising the SELRA to bring it into conformity with the Convention.

The Committee notes the Government's statement that the Committee on the Revision of Labour Relations Law has considered a revision of both the Labour Relations Act and the SELRA, with a view to bringing them into conformity with the Convention. The Government states that there has been progress with regard to repealing sections 139 and 140 of the Labour Relations Act, as well as repealing sections 33 and 77 of the SELRA. The Committee further notes the Government's statement that the draft revision of both Acts has been submitted to the Council of State for further

consideration. *The Committee requests the Government to pursue its efforts to ensure that draft revisions of both the Labour Relations Act (repealing sections 139 and 140) and the SELRA (repealing sections 33 and 77) are adopted in the near future to ensure that no sanctions involving compulsory labour can be imposed for peaceful participation in a strike. It requests the Government to continue to provide information on progress made in this regard, and a copy of the amended Acts, once adopted.*

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

## Turkey

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1998)**

The Committee notes the comments made by the Turkish Confederation of Employers' Associations (TİSK) dated 8 November 2011, as well as the Government's report.

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. Law enforcement measures.* The Committee previously requested information concerning the application in practice of sections 80 (prohibiting trafficking in persons for the purpose of both forced labour and prostitution), 117(2) (prohibiting the employment of homeless, helpless or dependent persons without payment or for substandard wages or forcibly subjecting them to inhumane working and living conditions), and 227(3) (prohibiting sending a person in or out of the country for the purpose of prostitution) of the Penal Code.

The Committee notes the information in a report from the International Trade Union Confederation (ITUC) entitled "Internationally Recognized Core Labour Standards in Turkey: Report for the WTO General Council Review of the Trade Policies of Turkey" of 21 and 23 February 2012 that trafficking in persons occurs in the country, with most of the trafficking cases relating to prostitution of women from Eastern Europe and forced labour of persons from Central Asia. This ITUC report indicates that the authorities have prosecuted several hundred individuals for trafficking in recent years. However, this report states that while authorities have prosecuted police officers for collaborating with traffickers before, uncorroborated reports indicate that complicity in trafficking remains a problem.

The Committee notes the detailed information in the Government's report concerning the application in practice of the Penal Code. Concerning section 227(3) of the Penal Code, the Government indicates that 37 persons were convicted of this offence, and 21 persons acquitted in 2009, while 65 persons were convicted and 32 persons were acquitted in 2010. Concerning the application of section 117(2), nine persons were convicted of this offence, and five persons acquitted in 2009, while three persons were convicted and ten persons were acquitted in 2010. With regard to the application of section 80 of the Penal Code, the Government indicates that there were 256 cases brought in 2009, involving 1,314 defendants, and 282 such cases brought in 2010, involving 1,827 defendants. The Committee also notes the information in the Government's report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182) that 12 law enforcement officers suspected to be involved in cases of trafficking were identified in 2009, and eight in 2010. The Government further indicates that through a project entitled "Supporting Turkey's struggle against Human Trafficking and Trafficking Victims Access to Justice", carried out in coordination with the International Organization for Migration (IOM) in 2009, 135 officials attended courses on combating trafficking in persons. The Government further indicates that a seminar was held in 2011 on combating trafficking in persons, in cooperation with the UN High Commissioner of Refugees and the IOM, with the participation of more than 130 inspectors of the Board of Inspection. *The Committee requests the Government to pursue its efforts to prevent, suppress and combat trafficking in persons, and to continue to provide information on the measures taken. It also requests the Government to continue to provide information on the application in practice of sections 80, 117(2) and 227(3) of the Penal Code, particularly the number of investigations, prosecutions, convictions and the specific penalties applied. Lastly, it requests the Government to take the necessary measures to ensure that governmental officials complicit with human traffickers are prosecuted and that sufficiently effective and dissuasive criminal penalties are imposed in practice.*

*2. Protection and assistance for victims of trafficking in persons.* The Committee notes the statement in the abovementioned ITUC report that law enforcement officials make insufficient use of trafficking victim identification procedures and that many such victims are detained and deported. This report states that the Government does not operate any victim shelters and does not provide adequate resources to NGO centres that offer assistance and services.

The Committee also notes the statement by the TİSK that a Memorandum of the General Directorate for Social Assistance and Solidarity (in the Office of the Prime Minister) of 20 May 2009 makes provisions enabling victims of human trafficking to benefit from free health services. The TİSK indicates that in 2010, 37 victims of trafficking received assistance. The TİSK also indicates that the General Directorate for Social Assistance and Solidarity signed an agreement to provide funding to civil society organizations for shelters for victims of trafficking in persons in both Ankara and Istanbul. The TİSK further indicates that coordination between various institutions for the identification of victims of trafficking occurs within the framework of the National Referral Mechanism, and that a telephone hotline for victims of trafficking has been established. In addition, the Committee notes the Government's indication that, within a project entitled "Consolidating Capacity of Local Administration and Law Enforcement to Identify Victims of Human Trafficking" organized in collaboration with the IOM, 28 persons were trained. Through this project, a "human trafficking

victim identification form” was prepared by the General Directorate of Security and 6,000 copies were distributed to provincial police commands, particularly in areas where trafficking occurs.

Lastly, the Committee notes the information from the UN country team in Turkey, in a report compiled by the Office of the High Commissioner of Human Rights for the Universal Periodic Review of 19 February 2010, that access to justice for victims of trafficking in persons remained limited and that redress and compensation mechanisms are not yet supported by the provision of sustainable public funding (A/HRC/WG.6/8/TUR/2, paragraph 42). ***The Committee requests the Government to continue to take measures to strengthen mechanisms for the identification of victims of trafficking in persons. It also requests the Government to intensify its efforts to provide protection and assistance (including medical, psychological and legal assistance), to victims of trafficking, and to provide information on the number of persons benefiting from these services. The Committee further requests the Government to provide information on the measures taken to ensure that victims are able to assert their rights.***

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

The Committee notes the observations made by the Confederation of Turkish Trade Unions (TÜRK-IS) dated 10 November 2011 and by the Turkish Confederation of Employers’ Associations (TISK) dated 8 November 2011, as well as the Government’s report.

*Article 1(a) of the Convention. Political coercion and punishment for holding or expressing views opposed to the established system.* 1. *The Penal Code.* The Committee previously noted that penalties of imprisonment (involving compulsory prison labour, under section 198 of the Regulations pertaining to the administration of penitentiaries and to the execution of sentences, adopted by the decision of the Council of Ministers of 5 July 1967, No. 6/8517, as amended) may be imposed under section 301 of the Penal Code. Section 301(1) and (2) of the Penal Code (as amended by Law No. 5759 of 30 April 2008) penalizes denigrating the Turkish Nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey as well as the judicial bodies, the military and the security structures of the State with imprisonment of a term of between six months and two years. The Committee noted that section 301(3), as amended, stated that the expression of ideas in the form of criticism shall not be punished. The Committee requested information on the application of section 301 of the Penal Code in practice.

The Committee notes that section 301(4) of the Penal Code, as amended, specifies that prosecution under this section shall be subject to the approval of the Minister of Justice. In this regard, the Committee notes the information in the Government’s report that between May 2008 and March 2011, a total of 1,570 files were received by the Ministry of Justice from the Office of the Chief Public Prosecutor pursuant to section 301 of the Penal Code. Approval was given to investigate only 5.8 per cent of the files submitted; 1,382 files were not approved for investigation, and permission was granted to investigate 88 files. Of these files, 30 pertained to actions committed through the press, while 58 related to offences of “flagrant contempt”. Of these 88 files investigated, 49 files (involving 62 suspects) have been concluded, and a total of 34 persons were convicted pursuant to section 301, and 28 persons were sentenced to imprisonment. The Government states that the number of investigations permitted by the Minister of Justice pursuant to section 301 has declined significantly, and that this provision is not being used systematically for restricting freedom of expression, including freedom of the press.

The Committee notes the statement of the TISK that the amendment of section 301, to require the permission of the Minister of Justice for investigations, resulted in a fall in the number of cases under this section. In the first seven months of 2010, only 3.57 per cent of the files submitted were allowed an investigation. The Committee also notes the statement of the UN country team in a report prepared by the High Commissioner of Human Rights for the Universal Periodic Review of 19 February 2010, that section 301 of the Criminal Code is no longer used systematically to restrict freedom of expression, and that the amendment to this section led to a significant decline in prosecutions in comparison with previous years (A/HRC/WG.6/8/TUR/2 paragraph 46). ***Taking due note of the information provided by the Government, the Committee requests the Government to continue to provide information on the application of section 301 of the Penal Code in practice, including the number and nature of offences, particularly relating to the cases where sentences of imprisonment have been imposed.***

2. *Act on the Fight against Terrorism.* The Committee previously noted that section 8 of the Act on the Fight against Terrorism (No. 3713 of 1991) prohibited propaganda against the indivisibility of the State. However, it also noted that this legislation had been amended in 2006, and requested information on these amendments.

The Committee notes the Government’s indication that Act No. 3713 was amended in 2006 by Act No. 5532. It notes that, pursuant to these amendments, section 8 of Act No. 3713 was replaced, and this section now relates to the financing of terrorism. However, the Committee also notes that section 6(2) of Act No. 3713, as amended, provides that printing or publishing declarations or leaflets emanating from terrorist organizations is punishable by a term of imprisonment from one to three years (previously a monetary fine). If such an offence is committed via print media, section 6(4) provides for imprisonment of the owners (ranging from 1,000 to 10,000 days) and editors (up to 5,000 days) of press or other media, even if they have not personally participated in the commission of this offence. Moreover, section 7(2) of Act No. 3713 provides for a term of imprisonment from one to five years for propaganda in favour of a

terrorist organization. This penalty is increased by half if committed through the press, and the owner and editor of the periodical are liable for imprisonment of between 1,000 days to 10,000 days.

In this connection, the Committee recalls that limitations may be imposed by law on individual rights and freedoms in order to ensure respect of the rights and freedoms of others and to meet the requirements of public order and the general welfare in a democratic society, and 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. However, the Committee wishes to emphasize that if such restrictions are formulated in such wide and general terms that they may lead to penalties involving compulsory labour as punishment for the peaceful expression of views or of opposition to the established political, social or economic system, such penalties are not in conformity with the Convention. ***The Committee therefore requests the Government to take the necessary measures to ensure that no prison sentence entailing compulsory labour can be imposed under Act No. 3713 on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. In this regard, it requests the Government to provide information in its next report on the application in practice of sections 6(2), 6(4) and 7(2) of Act No. 3713, as amended, including information concerning prosecutions, convictions and the specific penalties applied.***

3. *Political Parties Act.* The Committee previously noted that penalties of imprisonment (involving compulsory labour) can be imposed under sections 80–82, read in conjunction with section 117, of the Political Parties Act (No. 2820 of 1983), which prohibits political parties from seeking to alter the principle of the unity of the State, asserting the existence of minorities based on a national or religious culture or on racial or linguistic differences, seeking to form minorities by protecting and promoting languages and cultures other than the Turkish language and culture, using any language other than Turkish in the drafting and publication of parties' statutes and programmes, or advocating regionalism. The Committee subsequently noted the Government's indication 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.

The Committee notes the Government's statement that section 83 of the Political Parties Act prohibits political parties from promoting regionalism or racism in the country. The Committee also notes the Government's reference to several provisions of the Penal Code, including section 122 of the Penal Code which prohibits discrimination against persons in commercial activities, public services and economic activity. The Committee observes that these provisions do not directly relate to the application of the Political Parties Act. Referring to paragraph 307 of its General Survey of 2012 on the fundamental Conventions concerning rights at work, the Committee recalls that the prohibition of political views as a consequence of the prohibition of political parties or associations (subject to penalties involving compulsory labour) are not in conformity with the Convention. ***The Committee therefore requests the Government to take the necessary measures to repeal or amend sections 80–82 of the Political Parties Act to ensure that penalties of imprisonment (involving compulsory labour) cannot be imposed for having expressed political views as a consequence of the prohibition of political parties or associations. Pending the adoption of such an amendment, the Committee requests the Government to provide information on the application of these provisions in practice.***

*Article 1(b). Use of conscripts for purposes of economic development.* The Committee previously noted that section 10 of the Military Service Act, No. 1111, as amended by Act No. 3358, as well as section 5 of Council of Ministers Resolution No. 87/11945 of 12 July 1987, adopted pursuant to section 10 of Act No. 1111, lay down procedures relating to the surplus reserves, including procedures concerning persons liable to perform military service who are assigned duties in public bodies and institutions. The Committee subsequently noted the Government's statement that Act No. 3358, which amended section 10 of the Military Service Act, No. 1111, was no longer applied after 1991. Moreover, the Committee noted the Government's indication that a new draft Military Service Bill, aimed 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. The Committee requested the Government to provide information on the adoption of this Bill.

The Committee notes the Government's statement that the Bill to amend the Military Service Act, No. 1111, was submitted to the Turkish Grand National Assembly in 2008, but was not discussed during this legislative term. However, the Government also states that persons working for the Ministry of National Defence are employed under service contracts. ***The Committee therefore requests the Government to strengthen its efforts to ensure the amendment of the Military Service Act, No. 1111, to bring it into conformity with the Convention and the indicated practice.***

*Article 1(c) and (d). Disciplinary measures applicable to seafarers.* In its previous 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). However, the Committee noted the Government's indication that a new draft Commercial Code had been developed which did not include provisions similar to sections 1467 and 1469 of the present Commercial Code. The Committee expressed the firm hope that the draft Commercial Code would soon be adopted.



The Committee notes that the new Commercial Code No. 6102 was adopted on 13 January 2011, and that section 1533 of this Code repeals Act No. 6762. The Committee notes with *satisfaction* that this legislation does not contain any provisions providing for the forcible conveyance of seafarers or penalties of imprisonment on seafarers for breaches of labour discipline.

*Article 1(d). Punishment for participation in strikes.* The Committee previously noted that Act No. 2822 of 1983 on collective agreements, strikes and lockouts, pursuant to sections 70–72, 75, 77 and 79, provides for penalties of imprisonment (involving compulsory labour) as a punishment for participation in unlawful strikes, in circumstances falling within the scope of *Article 1(d)* of the Convention. It expressed the firm hope that Act No. 2822 would be amended. The Committee notes the Government's statement that negotiations with the social partners are ongoing with regard to the amendment of Act No. 2822. The Government states that amending this Act is one of the Government's priorities. ***Referring to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee requests the Government to take the necessary measures to ensure that Act No. 2822 is amended so that it does not contain any penal sanctions involving compulsory labour as a punishment for the peaceful participation in strikes.***

## Uganda

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1963)**

*Articles 1(1) and 2(1) of the Convention. Legislation concerning compulsory placement of unemployed persons on agricultural enterprises in rural areas.* For many 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 who fails or refuses to live on any farm settlement or who deserts or leaves such settlement without authorization. The Government indicated in its earlier report that the abovementioned Decree was in the process of being repealed and the Committee had also noted the assurances provided by the Government representative before the Conference Committee on the Application of Standards in June 2006 that the 1975 Decree was no longer applied in practice. The Committee notes the Government's indication in its report that the Community Farm Settlement Decree has been repealed and that the Community Settlement Act was adopted in 2005. ***Noting that the Government's report does not contain a copy of the text repealing the Community Farm Settlement Decree 1975, the Committee requests the Government to supply a copy of this document with its next report.***

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

### **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.***

## United Arab Emirates

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)**

*Preliminary remarks concerning the impact of compulsory prison labour on the application of the Convention.* Over a number of years, the Committee has been referring to certain provisions of the national legislation, under which penalties of imprisonment (involving compulsory prison labour) may be imposed in circumstances falling under

*Article 1(a),(c) and (d) of the Convention.* It noted the Government's repeated explications that all the provisions in question refer only to sanctions of imprisonment, without mentioning forced labour as a penalty.

The Committee once again takes note of these indications, as well as the Government's reference to the definition of forced labour contained in Article 2(1) of the Forced Labour Convention, 1930 (No. 29). In this regard, the Committee once again draws the Government's attention to the explanations provided in paragraphs 144–147 of its 2007 General Survey on the eradication of forced labour, according to which, 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 Convention No. 105, such as in the cases of the exaction of compulsory labour from common offenders convicted, for example, of robbery, kidnapping or other acts of violence or of having endangered the life or health of others, or numerous other offences.

However, the Committee emphasizes that if a person is required to perform compulsory prison labour because that person holds or has expressed certain 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 sanction in these circumstances.

*Article 1(a). Political coercion and punishment for holding or expressing political or ideological views.* Following its previous comments, the Committee takes due note that Federal Law No. 6 of 1974 on non-profit-making organizations has been repealed by Federal Law No. 2 of 2008 on non-profit-making associations and organizations, which annuls the penalty of imprisonment (involving compulsory prison labour) to persons who violate the provisions of Law No. 6 of 1974 and replaces it by financial penalties (section 57).

In its previous comments, the Committee noted that Federal Law No. 15 of 1980 governing publications and publishing imposes penal sanctions of imprisonment (involving compulsory labour) in accordance with sections 86 and 89 of the Law, for the violation of the following provisions of the law:

- section 70: prohibition upon criticizing the President of the Republic or the rulers of the Emirates;
- section 71: prohibition on publishing documents harmful to Islam, or to the Government, or to the country's interests or the basic systems on which society is founded;
- section 76: prohibition on publishing material containing information shameful to the President of an Arab or Muslim country or a country with friendly ties, as well as material which may threaten the ties of the country with Arab, Muslim or friendly countries;
- section 77: prohibition on publishing material which causes an injustice to Arabs or constitutes a misrepresentation of Arab civilization or cultural heritage;
- section 81: prohibition on publishing material which harms the national currency or causes confusion over the economic situation of a country.

The Committee recalls that limitations may be imposed by law on individual rights and freedoms in order to ensure respect of the rights and freedoms of others and to meet the just requirements of morality, public order and the general welfare in a democratic society (such as, for example, laws on defamation, sedition and subversion, public order and security). But where the restrictions of these rights and freedoms are formulated in such wide and general terms that they may lead to the imposition of penalties involving compulsory labour as punishment for the expression of political views or views ideologically opposed to the established political, social or economic system, it falls within the scope of the Convention (paragraph 153 of its 2007 General Survey).

***In the light of the above considerations, the Committee requests the Government to take the necessary measures to ensure that Federal Law No. 15 of 1980 is reviewed or abrogated, so that no sanctions involving compulsory labour can be imposed for holding or expressing political views or views ideologically opposed to the established political, social or economic system.***

Regarding the promulgation on 24 September 2007 of a Decree prohibiting the imprisonment of journalists in judicial cases related to publications, freedom of expression or the exercise of their occupation, the Committee notes the Government's statement that the abovementioned Decree is currently in force before the State courts, and based on it, a draft bill (dated 2009 and annexed to the Government's report), concerning the regulation of mass media activities, is currently in the process of adoption. Section 2 of this draft bill specifies that freedom of opinion and expression whether reflected orally or by any other means is guaranteed by the law. The Committee also notes that Chapter 6 of the draft bill lays down financial penalties in case of a violation of any provision and does not include any penalties which restrict or deprive freedom. ***The Committee requests the Government to provide information on any progress made in the adoption of the draft bill of 2009, as well as a copy of the text once adopted.***

Over a number of years, the Committee has been drawing the Government's attention to the incompatibility with the Convention of certain provisions of the Penal Code which prohibit the establishment of an organization or the convening of a meeting or conference for the purpose of attacking or mistreating the foundations or teachings of the Islamic religion, or calling for the observance of another religion, with such offences being punishable with imprisonment for a maximum period of ten years (sections 317 and 320). It also referred to sections 318 and 319 of the Penal Code which might impose a prison sentence, involving an obligation to work, on any person who is a member of an association specified in

section 317, who challenges the foundations or teachings of the Islamic religion, proselytizes another religion or advocates a related ideology.

The Committee notes that the Government's report contains no information regarding this point. The Committee recalls that sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the expression of views or of opposition to the established political, social or economic system, whether such prohibition is imposed by law or by a discretionary administrative decision (paragraph 154 of its 2007 General Survey).

***The Committee therefore once again expresses its firm hope that appropriate measures will be taken to bring sections 317–320 of the Penal Code into conformity with the Convention and that, pending the adoption of such measures, the Government will provide information on the application of sections 317–320 in practice, including copies of any relevant court decisions, indicating the penalties imposed.***

*Article 1(c). Disciplinary measures applicable to seafarers.* In its earlier comments, the Committee noted that under the Federal Law on Merchant Shipping (No. 26 of 1981), penalties of imprisonment (involving compulsory prison labour) may be imposed on seafarers for various breaches of labour discipline, such as violation of service-related orders, neglecting to serve on vessels or to mount guard, being absent from a vessel without authorization, or any other act that may disrupt order or the service on board (section 200(a)(c)(g) and (j)), refusal to comply with an order concerning work on board the vessel, repeated acts of disobedience (section 204(d) and (e)), or the performance of any acts mentioned in section 204 by more than three persons in agreement (section 205).

The Committee points out once again that *Article 1(c)* of the Convention prohibits the use of compulsory labour as a means of labour discipline, and that sanctions involving compulsory labour for breaches of labour discipline, such as desertion, absence without leave or disobedience, are not in conformity with the Convention, unless the acts committed were liable to endanger the ship or the life or health of persons (paragraph 179 of its 2007 General Survey).

***Noting that the Government's report does not contain relevant information on these matters, the Committee once again reiterates its hope that the necessary measures will be taken to bring the abovementioned provisions into conformity with the Convention by limiting their scope to circumstances in which the ship or the life or health of persons are endangered.***

*Article 1(d). Punishment for having participated in strikes.* In its earlier comments, the Committee had referred to section 231(1) of the Penal Code which provides for sanctions of imprisonment (involving an obligation to work) in cases in which at least three public officials abandon their jobs or voluntarily abstain from performing any obligations related thereto, acting in agreement among themselves or pursuing an illegal objective.

The Committee notes the Government's detailed explanations in its report. It however, observes that the Government's report contain no relevant information on how the abovementioned provision is applied in practice. The Committee recalls, once again, that no one who has participated in a strike should be subject to penal sanctions for the mere fact of peacefully participating in a strike and in no event should risk a prison sentence involving compulsory labour.

***The Committee hopes that the Government will provide in its next report further information on the application of section 231(1) of the Penal Code in practice, including copies of any court decisions defining or illustrating its scope.***

## United States

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1991)***

*Article 1(d) of the Convention. Sanctions involving compulsory labour for participation in strikes.* In its previous comments, the Committee noted that, pursuant to article 12, section 95-98.1, of the North Carolina General Statutes, strikes by public employees are declared illegal and against the public policy of the state. Under section 95-99, any violation of the provisions of article 12 is declared to be a Class 1 misdemeanor. Under section 15A-1340.23, read together with section 15A-1340.11 of Chapter 15A (Criminal Procedure Act), a person convicted of a Class 1 misdemeanor may be sentenced to "community punishment" and, upon a second conviction, to "active punishment", that is, imprisonment. In this regard, the Committee noted the information in the *Compendium of Community Corrections Programs in North Carolina* (published by the North Carolina Sentencing and Policy Advisory Commission) indicating that the imposition of community punishment may include assignment to the state's Community Service Work Program, which requires the offender to work for free for public or non-profit agencies in an area that will benefit the greater community. The Committee also noted that article 3 (Labor of Prisoners), section 148-26, of Chapter 148 (State Prison System) states that it is the public policy of the state of North Carolina that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them. In response, the Government indicated that the Committee's observations had been forwarded to the authorities in North Carolina.

The Committee notes that the Government once again indicates that state court records do not reveal a single instance in which an individual has been convicted for engaging in an illegal public sector strike. The Government states that, even if an individual were to be convicted, under North Carolina law a judge would have the discretion whether or not to order the convicted individual to perform work. The Government indicates that it communicated in writing, in

September 2011, to the authorities in North Carolina regarding the Committee's comments, and that it requested these authorities to provide information on any steps taken by the state government relating to these comments. The Government indicates that it will keep the Committee informed of any developments in this regard.

Observing that it has been raising this issue for a decade, the Committee must once again recall 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. The Committee refers in this connection to the explanations contained in paragraph 315 of its 2012 General Survey on the fundamental Conventions concerning rights at work, 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 that in both legislation and practice, no sanctions involving compulsory labour should be imposed for the mere fact of organizing or peacefully participating in strikes. ***The Committee therefore urges the Government to take the necessary measures to bring the North Carolina General Statutes into conformity with both the Convention and the indicated practice, in ensuring the repeal or amendment of sections 95-98.1 and 95-99, so as to ensure that penalties of compulsory labour (through the Community Service Work Program or during imprisonment) cannot be imposed for participation in a strike. The Committee hopes that in its next report the Government will be in a position to provide information on the progress achieved in this regard.***

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

## Uzbekistan

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)**

The Committee notes the Government's report and the observations of the International Organisation of Employers (IOE), dated 22 October 2012, which relate to the mobilization of adults, particularly teachers, university students and employees from the private and public sectors, in the national cotton harvest, as well as the Government's reply to these comments dated 20 November 2012.

*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 the allegations made in 2008 and 2009 by the IOE and the International Trade Union Confederation (ITUC) concerning the systematic and persistent use of forced labour, including forced child labour, in the cotton fields of Uzbekistan. The Committee recalled that similar allegations were made in 2004 by the Council of the Trade Unions Federation of Uzbekistan, which referred to practices of a mobilization and use of labour for purposes of economic development in cotton production, in which public sector workers, schoolchildren and university students were involved.

As regards practices of forcible involvement of schoolchildren in the cotton harvest, the Committee previously asked the Government to refer to its comments on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), likewise ratified by Uzbekistan.

However, as the Committee previously noted from the above allegations made by employers' and workers' organizations, not only children but also adults were subject to forced labour during the cotton harvest. The ITUC asserted, in particular, that, despite the existence of the legal framework against the use of forced labour, 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 Committee previously noted that, in its reply to the above communications by the IOE and the ITUC, the Government denied the allegations about coercion of large numbers of people to participate in agricultural works and reiterated that under no circumstances may employers 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 further indicated in its reply to the Committee's comments received in May 2011 that, according to the legislation in force, public sector workers and university students may participate in the cotton harvest if such work is performed under a labour contract concluded between an employer and a worker under section 72 of the Labour Code. Any other exaction of labour from these categories without payment would be considered as compulsion to work, which involves responsibility and punishment of perpetrators in accordance with the legislation. The Government also added that the State Legal Labour Inspection intervenes upon every revealed case of the exaction of forced labour and applies appropriate legal measures, while informing the competent bodies of the detected violations of labour legislation. The Government further made reference to the recent legislative measures aimed at improving the legal framework for the abolition of forced labour, such as the adoption of the Law on Measures to Combat Trafficking in Persons and respective amendments to the Criminal Code.

The Committee refers, however, to its comments addressed to the Government under Convention No. 182, in which it notes the ITUC observations under that Convention received in 2010, 2011 and 2012, as well as the IOE comments received in 2010 and 2012 and, in particular, the assertion contained in these communications that, despite the

Government's denial, sources in the country indicate the widespread mobilization of forced labour (particularly of children) in the annual cotton harvest in a number of Uzbekistan's regions.

*Recalling that the Convention prohibits the use of compulsory labour for purposes of economic development, the Committee requests the Government to provide, in its next report, information on the concrete measures taken, including through labour inspection, to ensure the elimination of the use of compulsory labour of public sector workers and students in cotton production. Noting also the general statistical data concerning a number of violations of the labour legislation detected in 2011 and a number of cases in which administrative penalties (fines) have been imposed on responsible public officials for such violations, the Committee requests the Government to provide statistics on the number of cases of forced labour detected by the State Legal Labour Inspection, indicating in particular whether judicial proceedings have been instituted in such cases and indicating the penalties imposed on perpetrators.*

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

## Bolivarian Republic of Venezuela

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)**

*Article 1(a) and (d) of the Convention. Imposition of sentences of imprisonment involving the obligation to work as a punishment for expressing political opinions or views ideologically opposed to the established political, social or economic system or as a punishment for having participated in strikes.* The Committee notes the comments submitted on 31 August 2011 by the Confederation of Workers of Venezuela (CTV) on the application by the Bolivarian Republic of Venezuela of a number of Conventions. The Committee observes that the CTV refers to several provisions of the national legislation (the Penal Code and the Framework Act on national security and defence) as restricting the exercise of the right to strike and serving as a basis for criminalizing social protest in the country, and accordingly constituting a form of blackmail and coercion to prevent workers from defending their interests legitimately. According to the union, these provisions can be used to penalize, through high fines as well as sentences of imprisonment, persons who, in the exercise of their right to strike, paralyse the activities of an enterprise.

The Committee observes that, in the context of the supervision of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), both the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference have expressed concern at the criminalization of legitimate trade union activities, at restrictions on the public freedoms that are necessary for the exercise of trade union rights and at allegations that a climate of intimidation prevails around trade union organizations, employers' organizations and heads of enterprises that are not sympathetic to the Government.

The Committee notes the report of the Inter-American Commission on Human Rights (IACHR) entitled "Democracy and human rights in Venezuela" (OEA/Ser.L/V/II. Doc.54, of 30 December 2009) and its 2010 Annual Report (OEA/Ser.L/V/II. Doc.5 corr.1, of 7 March 2011), and in particular paragraphs 608–837 covering the situation in the Bolivarian Republic of Venezuela. In its 2009 report, the IACHR examined with concern the situation with regard to freedom of thought and expression in the Bolivarian Republic of Venezuela. It considered that the lack of independence and autonomy of the judicial authorities in relation to the political authorities is a fragile aspect of democracy. It analysed the serious obstacles faced by human rights defenders and it expressed concern at the information attesting to a trend of acts of reprisal against individuals who express public disapproval of Government policies, which affect both opposition bodies and citizens who exercise their right to express their disagreement with the policies adopted. In its 2010 report, the IACHR indicates that this worrying trend has continued and also notes a trend to take disciplinary, administrative and penal action against the media and journalists. The IACHR recommended the Bolivarian Republic of Venezuela to refrain from carrying out reprisals or using the punitive power of the State to intimidate or sanction individuals on the basis of their political opinions and to guarantee the plurality of spaces for democratic activity, including respect for demonstrations and protests that are carried out in exercise of the right of assembly and peaceful demonstration. In its press releases Nos 36/10 and 61/10, the IACHR also expressed its deep concern at the use of the punitive power of the State to criminalize human rights defenders, judicialize peaceful social protests and bring criminal prosecutions against persons the authorities considered to be political opponents.

The Committee also notes that, in the context of the Universal Periodic Review carried out in October 2011 by the United Nations Human Rights Council, the United Nations Educational, Scientific and Cultural Organization (UNESCO) stated that the situation with regard to the right to freedom of expression had deteriorated in recent years and referred to a series of provisions of the national legislation that were also likely to restrict the right to freedom of expression (A/HRC/WG.6/12/VEN/2, paragraphs 44 and 46).

The Committee recalls that, under the terms of *Article 1(a) and (d)* of the Convention, persons who express political views, or who express opposition to the established political, social or economic system, or who participate in a strike, cannot be the subject of sanctions under the terms of which work is imposed upon them. The Committee notes that, under the terms of sections 12 and 15 of the Penal Code, persons sentenced to a penalty of *presidio* or of *prisión* are subject to the obligation to work. Only persons sentenced to a penalty of *arresto* are excluded from the obligation to work (section 17). The Committee draws attention to the following provisions of the Penal Code which establish penalties of *prisión* for certain forms of behaviour:

- offending or showing a lack of respect for the President of the Republic or for a number of public authorities (sections 147 and 148);
- public denigration of the National Assembly, the Supreme Court of Justice, etc. (section 149);
- offending the honour, reputation or prestige of a member of the National Assembly or a public servant, or of a judicial or political body (sections 222 and 225); proof of the truth of the facts is not admitted (section 226);
- defamation (sections 242 and 244).

*In view of the above, the Committee requests the Government to ensure that no one who expresses political views, who peacefully opposes the established political, social or economic system or who participates peacefully in a strike can be sentenced to imprisonment under the terms of which compulsory labour would be imposed. It also requests the Government to provide information on the application in practice of the above provisions, with a copy of court decisions based thereon and an indication of the facts that gave rise to the convictions.*

## Zambia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1964)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. National Plan of Action.* The Committee previously noted the adoption of the National Plan of Action to Combat Human Trafficking, and requested information on its implementation in practice. The Committee notes the information in the Government's report that the implementation of this Plan of Action has included research on the nature and extent of internal trafficking for domestic labour, as well as training programmes on human trafficking and forced labour and the development of a toolkit on forced labour and human trafficking, including several resources for employers in Zambia. The Government also indicates that it is taking measures to establish the Inter-ministerial Committee on Human Trafficking. ***The Committee requests the Government to pursue its efforts, within the framework of the National Plan of Action to Combat Human Trafficking to prevent, suppress and combat trafficking in persons, including internal trafficking, and to provide information on the measures taken in this regard and the results achieved. The Committee also requests the Government to provide information from the research conducted on internal trafficking for the purpose of domestic labour, once completed.***

*2. Protection and assistance to victims.* The Committee previously noted that sections 34, 37, 40–47 and 58 of the Anti-Human Trafficking Act provided for measures related to victim protection. It requested information on the application of these provisions in practice. The Committee notes the information in the Government's report that the number of identified victims of trafficking increased significantly from eight victims in 2009 to 53 victims in 2010. The Committee also notes the Government's statement that it is granting temporary residence permits to victims of trafficking who are willing to cooperate with law enforcement officials, pursuant to section 34 of the Anti-Human Trafficking Act. The Committee further takes due note of the Government's indication that, pursuant to sections 37 and 40–47 of the Anti-Human Trafficking Act, the Government works with non-governmental organizations to provide victims of trafficking with shelter, food, clothing, counselling, medical services and security. The Government states that it is collaborating with a non-governmental organization to build a modern shelter for victims of trafficking, and that the Immigration Department collaborates with the International Organization for Migration (IOM) to repatriate victims of trafficking to their countries of origin.

Lastly, the Committee notes the Government's indication that there have been no records of rulings from the courts pursuant to section 58 of the Anti-Human Trafficking Act, which allows the court to impose on the offender the obligation to pay compensation to trafficking victims. ***Observing the rising number of trafficking victims identified in the country, the Committee encourages the Government to pursue its efforts to provide protection and assistance to victims of trafficking, and to provide information on the number of persons benefiting from these services. The Committee also requests the Government to provide information on the measures taken or envisaged to provide legal assistance to victims of trafficking so they can assert their rights and be compensated for the damage suffered, pursuant to section 58 of the Anti-Human Trafficking Act.***

*3. Law enforcement and penalties.* The Committee previously noted the adoption of the Anti-Human Trafficking Act (No. 11 of 2008), and it requested information on the application of the Act in practice. The Committee notes the information in the Government's report that in 2009, three persons were prosecuted for trafficking in persons (in two cases) involving eight victims. In 2010, while eight suspects were identified in five separate cases (involving 53 victims), only two persons have thus far been prosecuted. The Committee also observes that, according to the information in the Government's report, in the years 2010 and 2011, no convictions were secured under the Anti-Human Trafficking Act.

The Committee also notes the indication of the International Trade Union Confederation (ITUC), in a report entitled "Internationally Recognized Core Labour Standards in Zambia: Report for the WTO General Council Review of the Trade Policies of Zambia", produced in July 2009, that despite the legislative prohibition, trafficking in persons remains a problem in practice. The Committee further notes that the Special Rapporteur on violence against women, its causes and consequences, in a report concerning her mission to Zambia presented to the Human Rights Council of 2 May 2011, indicated that trafficking occurs within the country's borders where women and children from rural areas are exploited in cities in involuntary domestic servitude or other types of forced labour (A/HRC/17/26/Add.4, paragraph 27). Moreover,

the Committee notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 19 September 2011, expressed concern that Zambia remains a country of origin, destination and transit for the trafficking of persons (CEDAW/C/ZMB/CO/5-6, paragraph 23). *The Committee therefore requests the Government to take the necessary measures to ensure that thorough investigations and effective prosecutions are carried out against those who commit the offence of trafficking in persons, including internal trafficking. It requests the Government to provide information on measures taken in this regard, including measures to provide appropriate training for law enforcement officials, border officials and the judiciary in order to strengthen their capacity to address this issue. Lastly, the Committee requests the Government to continue to provide information on the application of the Anti-Human Trafficking Act in practice, particularly the number of cases of trafficking detected, investigations, prosecutions, convictions and the specific penalties applied.*

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 the continued recourse 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. 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 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.

In this respect, the Committee also referred to the 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), which recommended that the POSA be brought into line with these Conventions. In this regard, the Committee also refers to the conclusions of the Conference Committee on the Application of Standards of June 2011, which requested the Government, to carry out, together with social partners, a full review of the POSA in practice, and considered that concrete steps should be taken to enable the elaboration and promulgation of clear lines of conduct for the police and security forces with regard to human and trade union rights.

The Committee notes the Government’s indication in its report that the Criminal Law (Codification and Reform) Act and the POSA are consistent with the Constitution of Zimbabwe, which ensures the general protection of the rights to freedom of conscience, expression, assembly and association.

The Committee furthermore notes that during the discussion by the United Nations Human Rights Council of the Universal Periodic Review of Zimbabwe in October 2011, concern was expressed about the Criminal Law (Codification and Reform) Act and the POSA and their effects on freedom of expression, freedom of association and assembly, and freedom of the press. The working group made numerous recommendations in order to amend the legislation and ensure the respect of these freedoms in practice, yet the Government of Zimbabwe clearly indicated that it did not support these recommendations (see A/HRC/19/14, Human Rights Council, 19 December 2011).

The Committee recalls once again 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 refers in this connection to paragraphs 302 and 303 of its 2012 General Survey on the fundamental Conventions concerning rights at work, 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 not in conformity 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.

While taking due note of the Government's statement that section 14(2)(a) of the Constitution specifically excludes from the definition of forced labour persons who perform any labour required in consequence of the sentence or order of a court, 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 urges the Government to take the necessary measures in order to ensure that the provisions of the POSA and the Criminal Law (Codification and Reform) Act are repealed or amended, 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 as 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 recalled that *Article 1(d)* of the Convention prohibits the use of forced or compulsory labour as a punishment for having participated in strikes.

The Committee notes the Government's statement in its report that these sections of the Labour Act are included in the draft Principles for the Harmonization and Review of Labour Laws in Zimbabwe, which are currently being finalized by the social partners and will be submitted to the ILO following Cabinet approval. In August 2011, the social partners agreed to the principle of streamlining mechanisms to deal with collective job action and review ministerial powers and those of the Labour Court on collective job action. This principle would provide the framework to amend section 103 defining essential services, section 104 on balloting for strike action, sections 107, 109 and 112 on excessive penalties, including lengthy periods of imprisonment and de-registration of trade unions and dismissal of employees involved in collective job action.

***In these circumstances, 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 peacefully participating in strikes. The Committee requests 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.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 29** (Algeria, Angola, Armenia, Burkina Faso, Burundi, Cambodia, Chad, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, India, Islamic Republic of Iran, Iraq, Ireland, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Mauritius, Republic of Moldova, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, Netherlands: Aruba, New Zealand, Nicaragua, Niger, Nigeria, Paraguay, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Samoa, Sao Tome and Principe, Saudi Arabia, Solomon Islands, South Africa, Sri Lanka, Switzerland, United Republic of Tanzania, Timor-Leste, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom: Anguilla, United Kingdom: St Helena, Uruguay, Vanuatu, Bolivarian Republic of Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe); **Convention No. 105** (Angola, Armenia, Barbados, Burkina Faso, Burundi, Chad, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Honduras, Hungary, India, Indonesia, Iraq, Israel, Italy, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Republic of Moldova, Mongolia, Mozambique, Namibia, Nepal, Netherlands, Netherlands: Aruba, Niger, Peru, Philippines, Romania,



*Rwanda, Samoa, Sao Tome and Principe, Sierra Leone, Slovakia, South Africa, Sri Lanka, Suriname, United Republic of Tanzania, Thailand, Togo, Uganda, United States, Uzbekistan, Vanuatu, Yemen, Zimbabwe).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 29 (Peru).**



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

### Bahamas

#### Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes with *interest* that the Child Protection Act, 2007, entered into force on 1 October 2009.

*Article 1 of the Convention. National policy.* In its previous comments, the Committee noted that, according to a study carried out in June 2005 within the framework of the ILO and the Canadian International Development Agency (CIDA) Regional Child Labour Project and entitled “Review of child labour laws of the Bahamas – A guide to legislative reform” (ILO and the CIDA Regional Child Labour Project Study), the Ministry of Labour and Immigration had established a National Committee on Child Labour whose task is to make recommendations for a policy on child labour. **Once again noting that the Government’s report does not provide any information on this point, the Committee expresses the hope that a national policy on child labour will be elaborated in the near future. It once again requests the Government to provide information on any progress made to this end in its next report.**

*Article 2(1). Scope of application.* The Committee previously noted that section 50(1) of the Employment Act, 2001, provides that a child (any person under the age of 14 years) shall not be employed in any undertaking except as expressly provided in the First Schedule. It also noted that, according to the ILO and the CIDA Regional Child Labour Project Study, children were found working in a variety of activities that were suggestive of child labour. Moreover, the Committee noted that, according to the ILO and the CIDA Regional Child Labour Project Study, the Labour Inspectorate Unit does not have the human resource capability or the administrative framework to conduct the requisite inspection of workplaces for child labour, and that the majority of children work in the informal economy, which is not generally inspected by the inspectorate. The Committee noted the Government’s indication that it would consult its relevant agencies on this point and that it had initiated the process of hiring additional labour inspectors. In light of the above, the Committee observed that the minimum age for admission to employment only applies to undertakings whereas the majority of children work in the informal economy. It reminded the Government that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not there is a contractual employment relationship and whether or not the work is remunerated. **Noting the absence of information in the Government’s report on this point, the Committee once again expresses the hope that, in hiring additional labour inspectors, the labour inspection component concerning children working on their own account or in the informal economy will be strengthened. In this regard, it once again requests the Government to adapt and strengthen the labour inspection services in order to ensure that the protection established by the Convention is secured for children working in these sectors. The Committee requests the Government to provide information on any steps taken in this regard in its next report.**

*Article 2(2) and (5). Raising the minimum age for admission to employment or work.* The Committee previously noted that the minimum age for admission to employment or work specified by the Bahamas at the time of ratification was 14 years. The Committee also noted that section 50(1) of the Employment Act provided for the general prohibition of employing children under 14 years of age in any undertaking, save for certain exceptions.

The Committee notes that section 7(2) of the Child Protection Act provides that no child under the age of 16 shall be employed, save as is provided by subsection (3), which provides that a child under the age of 16 may be employed in any occupation in which his/her employment is sanctioned by any other law or prescribed under this Act. **The Committee requests the Government to indicate whether it intends to raise the minimum age for admission to employment or work initially specified (14 years) to the age of 16, in accordance with the Child Protection Act, and amend the Employment Act in order to eliminate this discrepancy in the national legislation. If so, the Committee takes the opportunity to draw the Government’s attention to the provisions of Article 2(2) of the Convention, which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office.**

*Article 2(3). Age of completion of compulsory schooling.* The Committee noted that, by virtue of section 22(3) of the Education Act, the age of completion of compulsory schooling is 16 years. It also noted that, according to data from the UNESCO Institute for Statistics of 2005, the school enrolment rate at the primary school level is 92 per cent for girls and 89 per cent for boys, and at the secondary level 84 per cent for girls and 83 per cent for boys. Moreover, the Committee noted that, according to the 2008 Education for All UNESCO Report entitled *Education for All by 2015 – Will we make it?* (2008 EFA UNESCO Report), progress was made in attaining the EFA agenda. The Committee noted however that, according to the 2008 EFA UNESCO Report, the Bahamas is at risk of not achieving the EFA goal by 2015 because progress is too slow.

The Committee notes the absence of information in the Government’s report on this point. **Considering that compulsory education is one of the most effective ways of combating child labour, the Committee once again requests**

***the Government to take the necessary measures to increase the school enrolment rate as well as completion rate at both the primary and secondary school levels in order to achieve the EFA goal by 2015, and to provide information on the results attained.***

*Article 3(1). Minimum age for admission to hazardous work.* The Committee previously noted the Government's information that the Employment Act does not prohibit young persons between 14 and 18 years of age from being employed in hazardous work. The Committee expressed the hope that the Government would take the necessary measures to establish the minimum age for admission to hazardous work at 18 years in the near future.

The Committee notes with **satisfaction** that section 7(1) of the Child Protection Act provides that no child – a person below the age of 18 years – shall be employed or engaged in any activity that may be detrimental to his or her health, education, or mental, physical or moral development.

*Article 3(2). Determination of types of hazardous work.* In its previous comments, the Committee noted that the national legislation did not contain a determination of the types of employment or work likely to jeopardize the health, safety or morals of young persons below 18 years of age. It also noted the Government's indication that it would address this issue in forecasted amendments to the Employment Act after consultation with representatives of employers' and workers' organizations. In this regard, the Committee noted that, according to the Government, it had arranged with the ILO Regional Office to establish a list of hazardous occupations as part of its Decent Work Country Programme.

The Committee notes the absence of information in the Government's report on this point. However, the Committee notes that a delegation of the Bahamas attended the ILO Subregional Workshop on the Elimination of Hazardous Child Labour for Select Caribbean Countries in October 2011. The Committee notes that this workshop aimed to enhance skills for the preparation of a list of hazardous work through internal consultations and collaboration. ***The Committee therefore urges the Government to take the necessary measures to ensure the adoption, in the near future, of legal provisions determining the types of hazardous work to be prohibited for persons under 18 years of age. The Committee also requests the Government to provide information on the consultations held with the organizations of employers and workers concerned with this subject.***

*Article 7. Light work.* The Committee previously noted that section 7(3)(a) of the Child Protection Act provides that a child under the age of 16 may be employed by the child's parents or guardian in light domestic, agricultural or horticultural work. It requested the Government to provide information on the number of hours during which, and the conditions in which, light domestic, agricultural or horticultural work may be undertaken by children under the age of 16 years. The Committee noted the Government's indication that it would undertake to provide information to the Committee on the measures taken or envisaged in respect of provisions or regulations which would determine light work activities and the conditions in which such employment or work may be undertaken by young persons from the age of 12 years. ***Once again noting the absence of information in the Government's report on this point, the Committee urges the Government to take these measures in the near future in order to give effect to the Convention on this point. It once again requests the Government to provide any information on progress made in this regard.***

*Article 9(1). Penalties.* In its previous comments, the Committee noted that the Child Protection Act does not provide for penalties in case of contravention of section 7 of the Act regarding child labour. It requested the Government to indicate the legal provisions that prescribe penalties in case of violations of the Convention.

The Committee notes the absence of information in the Government's report on this point. It once again recalls that, by virtue of *Article 9(1)* of the Convention, all necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority, to ensure the effective enforcement of the provisions of this Convention. ***The Committee urges the Government to take measures to ensure that regulations provide for penalties in case of violation of section 7 of the Child Protection Act regarding child labour. It requests the Government to provide information on the progress made in this regard in its next report.***

*Article 9(3). Registers of employment.* The Committee noted the Government's indication that some provisions of the Employment Act give effect to this Article of the Convention, particularly section 61(1) which lays down that every employer shall keep a register of wage payments and accounts in respect of each employee for a period of three years. The Committee observed that this provision of the Employment Act does not meet the conditions provided by *Article 9(3)* of the Convention. It also observed that the Child Protection Act does not include a provision requiring the keeping of registers or other documents by employers.

The Committee notes the Government's indication that, by virtue of section 71(a) of the Employment Act, employers are required to make, and keep for such period as may be prescribed after the work is performed, such records of the names, addresses, ages, wages, hours worked, annual vacations and other conditions of work of each of their employees as may be prescribed. By virtue of section 71(b), employers are required to furnish such information to the Minister of Labour if it is requested by the Minister. The Government also indicates that it is currently considering a proposal made by workers' organizations to amend section 71 of the Employment Act in order to allow a worker or his or her union representative to request his or her employer to provide the information contained in these records to the Minister of Labour. ***The Committee requests the Government to provide information on the progress made in amending section 71 of the Employment Act and to communicate a copy of the new section, once amended.***

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee requested the Government to provide information on the manner in which the Convention is applied in practice. **Noting the absence of information on this point in the Government's report, the Committee once again requests it to provide information on the manner in which the Convention is applied in practice, including, for example, statistical data on the employment of children and young persons, especially regarding children working in the informal economy, as well as extracts from the reports of inspection services and information on the number and nature of contraventions reported and penalties applied. To the extent possible, this information should be disaggregated by age and sex.**

## Burkina Faso

### 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 a national study on child labour had been conducted in the country and that a new national plan of action on child labour was being drawn up.

The Committee notes the Government's indication that in 2006 Burkina Faso conducted a national survey of child labour (ENTE) with the support of ILO-IPEC-SIMPOC. The results of this survey were published in 2008 and are the most recent data available concerning child labour. The Committee notes that, according to the ENTE, child labour affects 41.1 per cent of children between 5 and 17 years of age in Burkina Faso, a total of 1,658,869 working children, who devote between 19 and 25 hours per week to their work. Moreover, 39.3 per cent of children are forced to perform harmful activities and 35.8 per cent do work that is classified as hazardous. The survey shows that there are more working children in rural areas (44.1 per cent) than in urban areas (23.2 per cent). The main sectors where economically active children are present are agriculture, fishing, hunting and domestic work. The proportion of working children increases considerably with age. Nearly 30 per cent of children between 5 and 9 years of age and 47.6 per cent of children between 10 and 14 years of age work in various economic sectors. In the 15–17 age group, more than half (56 per cent) are working children. The Committee notes that on 15 February 2012 the Government adopted the National Plan of Action against the worst forms of child labour in Burkina Faso 2011–15 (PAN/PFTE), drawn up in cooperation with ILO-IPEC, with the general objective of reducing the incidence of child labour by 2015. **Noting with concern that a significant number of children are working below the minimum age, especially in dangerous conditions, the Committee requests the Government to strengthen its efforts to ensure the gradual elimination of child labour. In this regard, it requests the Government to provide detailed information on the implementation of PAN/PFTE in its next report. The Committee also requests the Government to continue to supply information on the application of the Convention in practice, particularly statistics on the employment of children under 15 years of age and reports of the inspection services.**

*Article 3(1) and (2). Hazardous work and determination of these types of work.* The Committee previously noted that the Ministry of Labour and Social Security sponsored a study in 2008 in order to produce an overview of hazardous types of work and propose draft legislation prohibiting the performance of these types of work by children. The Committee reminded the Government that under *Article 3(2)* of the Convention, hazardous types of work should be determined after consultation with the organizations of employers and workers concerned, where such exist.

The Committee notes with *satisfaction* that the Government, in cooperation with the employers' and workers' organizations concerned, drew up and adopted Decree No. 2009-365/PRES/PM/MTSS/MS/MASSN of 28 May 2009 determining the list of hazardous types of work prohibited for children in Burkina Faso. This Decree, which defines a child as any person under 18 years of age, determines the list of hazardous types of work prohibited for children. The Committee observes that section 2 of the Decree specifically prohibits: work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children; work which exposes children to physical, psychological or sexual abuse; work performed underground, under water, at dangerous heights or in confined spaces; and work performed with dangerous machinery, equipment or tools, or which involves the handling or carrying of heavy loads. Moreover, section 5 of the Decree establishes a list of hazardous types of work prohibited for children by sector of activity, including agriculture, stock rearing, fishing, agro-forestry and hunting, industry, mining, quarries and small-scale gold mines, construction and public works, the informal sector, craft industries, performing arts, transport, and the human and animal health sector.

*Article 9(1). Penalties.* In its previous comments, the Committee requested the Government to indicate the precise penalties applicable for violations of section 149 of the Labour Code of 2008 concerning the prohibition on the performance of hazardous work by children and young persons.

The Committee notes the Government's indication that, since hazardous work is one of the worst forms of child labour, violations of section 149 of the Labour Code incur the penalties established by Act No. 029-2008/AN of 15 May 2008 combating trafficking in persons and similar practices. The Committee observes that section 7 of the Decree of 2009 determining the list of hazardous types of work prohibited for children in Burkina Faso provides that violations of the provisions of the Decree shall be penalized according to the provisions of section 5 of the Act of 2008 combating trafficking in persons and similar practices. The Committee notes with *interest* that, under the terms of section 5 of this Act, any person who commits an offence constituting one of the worst forms of child labour, including hazardous work, shall be liable to imprisonment ranging from ten to 20 years. **The Committee requests the Government to supply**

*information on the nature of the violations reported by the labour inspectorate, the number of persons prosecuted and the penalties imposed.*

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)**

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children and sanctions.* In its previous comments, the Committee noted the broad extent of internal and trans-border trafficking of children for the exploitation of their labour. The Committee also noted with interest the adoption of Decree No. 2008-332/PRES of 19 June 2008 issuing Act No. 29-2008/AN of 15 May 2008 to combat trafficking in persons and similar practices (Act to combat trafficking in persons and similar practices). The Committee took due note that sections 3 and 4 of the Act to combat trafficking in persons and similar practices provides for terms of imprisonment ranging from five to 20 years. The Committee noted several decisions handed down by the High Court between 2004 and 2007. The Committee also noted that individuals who had been prosecuted for trafficking in children had been 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, however, observed that, of the seven prison sentences handed down, six were suspended; one person had been sentenced to two months' imprisonment and another to a fine of 50,000 CFA francs.

The Committee notes the Government's indications that, in total, 349 cases of the abduction of children and 44 prosecutions for trafficking in children have been recorded by the national courts over the past four years. The Government adds that in 2010 a police operation in the Cascades region resulted in the arrest of 17 traffickers in two days, who were then referred to the judicial authorities. The Government also conducted, with Interpol support, a police operation involving around 100 police officers and around 20 child protection workers, as a result of which, within two days, 173 children were intercepted and protected and 15 traffickers arrested. However, the Committee observes that the Government has not provided any information on the imposition of penalties on those responsible for violations relating to trafficking in children. The Committee also notes that, according to the examination of the reports submitted in accordance with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (examination of the reports submitted to the CRC/OPSC) of 7 May 2012 (CRC/C/OPSC/BFA/1, paragraphs 47–48), the available data on the cases of trafficking in children registered by the courts are not sufficient to indicate whether prosecutions have been opened in all of the presumed cases of trafficking.

The Committee once again reminds the Government that trafficking in 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 to 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 in children are sufficiently effective and dissuasive and that they are applied in practice. It once again requests the Government to provide information in this respect. The Committee further requests the Government to continue providing information on the application in practice of the Act to combat trafficking in persons and similar practices, particularly by providing statistics on the number and nature of the violations reported, investigations, prosecutions, convictions and penal sanctions imposed.***

*Article 4(1). Determination of hazardous types of work.* In its previous comments, the Committee noted that the Ministry of Labour and Social Security had sponsored a study in 2008 to assess the situation with regard to hazardous work and to propose draft legislation prohibiting the performance of these types of work by children. The Committee expressed the firm hope that the draft legislation prohibiting the performance of these types of work by children under 18 years of age and determining these types of work would be drawn up in the near future.

The Committee notes with *satisfaction* that the Government, in collaboration with the employers' and workers' organizations concerned, prepared and adopted Decree No. 2009-365/PRES/PM/MTSS/MS/MASSN of 28 May 2009 to determine the list of hazardous types of work prohibited for children in Burkina Faso. This Decree, which defines a child as any person under 18 years of age, determines the list of hazardous types of work that are prohibited for children. The Committee notes that section 5 of the Decree contains a detailed list of hazardous types of work prohibited for children by sector, including agriculture, stock-raising, fishing, agro-forestry and hunting, industry, mines, quarries and gold-washing sites, construction and public works, the informal economy, artisanal work, arts and theatrical representations, transport, and the human and animal health sector.

*Article 5. Monitoring mechanisms. National Multi-Sectoral Committee to Combat Trafficking in Persons.* The Committee notes the Government's indication that a National Multi-Sectoral Committee to Combat Trafficking in Persons and Assimilated Practices, chaired by the Department of Social Action, was established by Joint Decree No. 2009-529/PRES/PM/MASSN/MATD/SECU of 17 July 2009. The Multi-Sectoral Committee meets annually in its ordinary session to review action to combat trafficking in persons, identify trends and make recommendations. During the 2011 session the need was identified to train actors in the field, and the necessity to disseminate widely certain papers on trafficking. ***The Committee requests the Government to continue its efforts to combat trafficking in children by reinforcing the capacity of the bodies responsible for law enforcement, including through the action of the National***

**Multi-Sectoral Committee to Combat Trafficking in Persons. It requests the Government to provide information on the progress achieved in this respect.**

*Article 6. Plan of action.* The Committee notes that, according to the examination of the reports submitted to the CRC/OPSC on 7 May 2012 (CRC/C/OPSC/BFA/1, paragraph 76), national action plans are being prepared, including the National Plan of Action to Combat Trafficking and Sexual Violence against Children in Burkina Faso, which sets out clear strategies for combating child trafficking and the sexual exploitation of children. **The Committee requests the Government to provide information on the specific measures adopted or envisaged in the context of the National Plan of Action to Combat Trafficking and Sexual Violence against Children in Burkina Faso, and the results achieved as a result of the implementation of these measures. It also requests the Government to provide a copy of the Plan of Action with its next report.**

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Sale and trafficking of children.* The Committee notes the Government's indications concerning its initiatives and prevention measures to combat trafficking, particularly of children. Through the Ministry of Social Action and National Solidarity (MASSN), the Government is undertaking awareness-raising activities with the principal stakeholders. Between 2008 and 2009, over 15,000 copies of the Act to combat trafficking in persons and similar practices were made available. These measures are combined with awareness-raising campaigns conducted among at-risk categories of the population through informal talks, cinema discussions and theatrical forums. The Government indicates that its awareness-raising activities as a whole have directly reached out to 70,834 people, including 18,815 men, 19,679 women and 32,340 children. **The Committee encourages the Government to continue its efforts to prevent children under 18 years of age from becoming victims of trafficking for economic or sexual exploitation. It requests the Government to provide information on the results achieved following the implementation of the MASSN's awareness-raising activities.**

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour. 1. Sale and trafficking of children.* Further to its previous comments, the Committee notes the Government's indications that victims of trafficking in Burkina Faso are put up in transit centres, where boys are separated from girls. These victims are provided with food, medical and psychosocial care and clothing, as well as psychological support for those suffering from trauma, in accordance with the UNICEF guiding principles. The Government adds that victims of trafficking, without distinction as to nationality, benefit from reintegration measures on the basis of projects formulated with their participation with a view to facilitating their integration into the community. The repatriation of foreign victims of trafficking is not compulsory, particularly where victims are likely to be subject to reprisals in their country of origin. The Committee notes that there are now 23 transit centres and that the Government is continuing the construction and equipment of such transit centres in various regions, cities and departments of the country. The Committee notes with **interest** the Government's indications that, during the years 2009–11, some 2,299 child victims of internal trafficking (742 girls and 1,557 boys) and 329 child victims of trans-border trafficking (72 girls and 257 boys) were intercepted. The Committee takes due note of the measures adopted by the Government for the removal of children from sale and trafficking and to ensure their rehabilitation and social integration, and it considers these measures to be a demonstration of its political will to eliminate this worst form of child labour. **The Committee strongly encourages the Government to pursue its efforts and requests it to continue providing information on the time-bound measures taken for the removal of child victims of sale and trafficking and their rehabilitation and social integration, and the results achieved. It requests the Government to provide information on the number of child victims of trafficking, both internal and trans-border, who have benefited from rehabilitation and social integration measures in transit centres.**

*2. Project for small-scale gold mines in West Africa.* Further to its previous comments, the Committee notes the Government's indications that it has been undertaking, in partnership with UNICEF, the project "Child labour in artisanal mines and quarries", launched in 2009 under the coordination of a technical guidance committee chaired by the MASSN. The project activities cover 23 artisanal mines and quarries in five regions of Burkina Faso. The Committee notes that, since the inception of the project in 2009, it has led to the removal of 11,123 children (6,021 boys and 5,012 girls), who benefit from support for their rehabilitation in the education and economic systems. Accordingly, 3,062 children between the ages of 3 and 6 years benefited from pre-school care in *bisongos*; 6,216 children between 6 and 12 years have been registered in primary school; 897 children between 13 and 17 years of age have been placed in income-generating activities; 948 children between 15 and 17 years of age have been enrolled in vocational training in various sectors in partnership with the National Employment Agency; and 1,000 mothers of children working in mines have benefited from support for income-earning activities with a view to increasing their capacity to protect their children from the worst forms of child labour.

The Committee notes the Government's indication that, with a view to guiding the project activities more effectively, it undertook a study in 2010 on child labour in gold-washing sites and artisanal quarries in five regions of the country. This study shows that around one third of the population on the 86 artisanal gold-washing sites are children, or a total of 19,881 children, of whom 51.4 per cent were boys and 48.6 per cent girls. The study also reveals the use of children at all levels in the production of minerals, work in mine galleries, dynamiting rocks, rock breaking, crushing and sieving, the sale of food and water and hauling minerals to sheds. On mine and quarry sites, it is generally children who act as intermediaries for access to illicit products (the sale of drugs) or who procure prostitutes. While noting the considerable efforts made by the Government, the Committee is bound to express **concern** at the number of children

engaged in the worst forms of child labour in gold-washing sites and artisanal quarries in Burkina Faso. *The Committee, therefore, requests the Government to intensify its efforts to remove children from the worst forms of child labour in artisanal gold mines and to ensure their rehabilitation and social integration in the context of the UNICEF project “Child labour in artisanal mines and quarries” and through any other time-bound measures. It requests the Government to continue providing information on the results achieved.*

*Article 8. International cooperation and assistance. Regional cooperation.* The Committee noted previously 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.

The Government indicates in its report that Burkina Faso generally enjoys good cooperation with countries in the region, which facilitates the processing of cross-border trafficking cases. For example, solely during the first half of 2012, cooperation with the police in Benin resulted in the interception and repatriation of nine children, all boys, and the arrest of one trafficker. Cooperation with Côte d’Ivoire led to the removal of 14 boys from trafficking and their reintegration into their families. The Committee also notes the Government’s indication that the conclusion of a cooperation agreement with Côte d’Ivoire is envisaged for 2012 and that Burkina Faso is in the process of addressing a specific problem of the trafficking of young girls to Lebanon through the intervention of several ministries of justice, including that of the United States. *The Committee encourages the Government to continue its efforts to reinforce international cooperation and assistance for the elimination of the trafficking of children for economic and sexual exploitation and requests it to continue providing information on the results achieved in this respect.*

*Parts IV and V of the report form. Application of the Convention in practice.* The Committee noted previously that a national study on child labour had been conducted in the country and requested the Government to provide a copy of it.

The Committee notes the Government’s indication that Burkina Faso conducted a National Survey of Child Labour (ENTE) in 2006 with the support of ILO/IPEC/SIMPOC. The findings of the survey were published in 2008 and are currently the most recent data on child labour. The Committee notes that, according to the ENTE, child labour affects 41.1 per cent of children between 5 and 17 years of age in Burkina Faso, or 1,658,869 child workers. The ENTE also indicates that 1,447,146 children are engaged in hazardous types of work in Burkina Faso, or 35.8 per cent of all children between the ages of 5 and 17 years. Children engaged in hazardous activities are found more in rural than in urban areas (38.5 per cent compared with 19.9 per cent), and boys are more affected than girls (41.4 per cent compared with 29.9 per cent). The sector which employs the largest number of children between the ages of 15 and 17 years in hazardous work is agriculture, fishing and hunting, in which 85.8 per cent (or 774,041 children) of the children involved in the sector are engaged in hazardous types of work. The figures are 88 per cent (219,883 children) in domestic work, 79.7 per cent (58,263 children) in commerce and repairs, 91.5 per cent (27,268 children) in mineral extraction, 84.8 per cent (20,909 children) in manufacturing, water, electricity and gas, 94.4 per cent (10,941 children) in construction and 75.8 per cent (9,909 children) in other services. *Expressing concern at the situation and number of children under 18 years of age engaged in hazardous forms of work, the Committee requests the Government to intensify its efforts for the elimination of these worst forms of child labour. It requests the Government to continue providing information on any progress achieved in this respect and on the results obtained. The Committee further asks the Government to continue providing 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 and the number and nature of infringements reported, investigations, prosecutions, convictions and penal sanctions applied. To the extent possible, the information provided should be disaggregated by age and sex.*

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

## 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.**

## Chad

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (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 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.***

## Congo

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)***

The Committee notes with ***regret*** 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 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 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 of children who have either been picked up by the national police or removed from families; and (b) the requirement at borders (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 near future.***

## Dominican Republic

### **Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1973)**

*Articles 2(1) and 3(1) of the Convention. Thorough medical supervision up to the age of 18 years.* In its previous comments, the Committee noted that section 248 of the Labour Code provides that any minor under 16 years of age wishing to carry out any kind of work must undergo a thorough medical examination. It also noted that sections 52 and 53 of Regulation No. 258-93 of 12 October 1993 issuing regulations under the Labour Code (hereinafter, Regulation No. 258-93 of 12 October 1993), provide that working minors shall be under medical supervision until they reach the age of 16 years, as envisaged in section 17 of the Labour Code. The Committee requested the Government to provide information on the measures adopted to raise the age set out in the Labour Code and in Regulation No. 258-93 of 12 October 1993 from 16 to 18 years so that the above texts are brought in compliance with the Convention. It noted the Government's indications that preparatory work in this regard had concluded that the age established by the Labour Code should be raised and that a resolution relating to Regulation No. 258-93 of 12 October 1993 had already raised the age from 16 to 18 years.

The Committee notes the Government's information in its report that, on 10 August 2012, the Ministry of Labour presented for tripartite discussion to the most representative employers' and workers' organizations a proposal to amend the Labour Code. *The Committee hopes that the proposal to amend the Labour Code to be adopted will ensure that the Labour Code and Regulation No. 258-93 of 12 October 1993 are brought into conformity with the Convention and raise from 16 to at least 18 years the age established for thorough medical supervision. It requests the Government to provide information on any progress made in this regard. Noting the absence of information on this point in the Government's report, the Committee once again requests the Government to provide a copy of the resolution which is reported to have already raised the age established for thorough medical supervision from 16 to 18 years.*

*Article 4(1). Medical examinations and re-examinations for fitness for employment until at least the age of 21 years.* The Committee noted previously that, under the terms of section 53 of Regulation No. 258-93 of 12 October 1993, the medical examination only applies to those under 16 years of age and has to be renewed annually or every three months where the work involves high risks for the health of the young person. The Committee recalled that, by virtue of *Article 4(1)* of the Convention, in occupations which involve high health risks for children or young persons, the medical examination and re-examination for fitness for employment shall be required until at least the age of 21 years. *The Committee hopes that the proposal to amend the Labour Code, referred to above, will soon be adopted so as to bring legislation in compliance with the Convention on this point and requests the Government to provide information on any progress made in this regard.*

*Article 4(2). Specification of the occupations in which a medical examination for fitness for employment shall be required until at least the age of 21 years.* The Committee notes the Government's indications that resolution No. 52/2004 establishes a detailed list of hazardous and unhealthy types of work prohibited for children under 18 years of age. However, the resolution does not specify the occupations or categories of occupations in which a medical examination for fitness for employment shall be required until at least the age of 21 years, or empowers an appropriate authority to specify such occupations. *The Committee therefore requests the Government to take the necessary measures to ensure that the process of amending the Labour Code referred to above takes into account this matter in order to bring legislation in compliance with the Convention.*

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

## 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.* In its previous comments, the Committee 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 the Government had brought the national legislation relating to the sale and trafficking of children into line with the Convention. However, it observed 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 in September 2010 (E/ICEF/2010/P/L.17, paragraph 21), even though policies and laws existed to protect children against trafficking and several structures had an operational mandate in this area, legislation was not regularly enforced and coordination was weak, and for this reason trafficking was a major threat to children in the country. It also noted that 11 court cases were in progress, most of which had been referred to the Office of the Public Prosecutor.

The Committee notes the Government's indication that decisions on the 11 court cases have not yet been handed down. The Committee also notes the Government's indication that a police operation was undertaken from 6 to

15 December 2010 with the collaboration of Interpol, during which over 38 presumed traffickers were arrested. The police forces also arrested two men of foreign nationality who were presumed to have engaged in trafficking in children. In January 2012, a woman of foreign nationality was arrested for the ill-treatment and forced labour of six children. The Government adds that prosecutions have been initiated in relation to all of these arrests.

The Committee notes that the United Nations Special Rapporteur on trafficking in persons visited Gabon in May 2012. The Committee notes the preliminary conclusions of the mission of the Special Rapporteur, in which she observes that it is alarming that up to now no case relating to trafficking has been judged by the criminal courts, which contributes to the impunity enjoyed by traffickers who engage in illicit and clandestine operations. The Special Rapporteur therefore recommends that the performance of the courts needs to be improved to ensure the rapid examination of cases of trafficking through regular sittings of the criminal court. The Committee expresses *concern* at the fact that the prosecutions of those who are presumed to be responsible for trafficking in children in Gabon do not appear to be dealt with by the national courts in good time. ***The Committee once again urges the Government to take the necessary measures to ensure the in-depth 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 and to ensure the speedy determination of trafficking cases in the courts. In this respect, it once again requests the Government to provide specific information with its next report on the application of the provisions relating to this worst form of child labour, including statistics on the number of convictions and penalties imposed, as well as copies of the court decisions relating to the cases referred to the Office of the Public Prosecutor.***

*Article 5. Monitoring mechanisms.* 1. *Council to Prevent and Combat the Trafficking of Children.* In its previous comments, the Committee once again requested the Government to provide information on the operation of the Council and the watchdog committees entrusted with preventing and combating trafficking in children.

The Committee notes the Government's indications that the Council to Prevent and Combat the Trafficking of Children is an administrative authority under the responsibility of the Ministry of Human Rights. In practice, the monitoring of the phenomenon of trafficking is ensured by a Monitoring Committee and watchdog committees. The Monitoring Committee is the national focal point to combat trafficking in children and is competent to assist the Council in its functions and for the implementation of its decisions. At the national level, the Monitoring Committee is entrusted with coordinating the formulation and implementation of the national strategy to combat trafficking in children. At the international level, the responsibilities of the Monitoring Committee include the establishment of bilateral cooperation and judicial assistance mechanisms for the protection of child victims of trans-border trafficking. The watchdog committees, which were created in 2004 in the context of the ILO/IPEC/LUTRENA project, are responsible for monitoring and combating trafficking in children for their exploitation within the country. The Monitoring Committee is the body responsible for planning and coordinating the activities of the watchdog committees in the seven provinces where they are currently operational. The watchdog committees are composed of two bodies, namely: (1) the intervention unit, which is responsible for detecting and repressing trafficking in children; and (2) the support unit, which provides aid and assistance to child victims of trafficking. The Government adds that, in the context of the "Bana" operation in December 2010, around 20 children were identified and removed from trafficking as a result of the action of the watchdog committees.

The Committee takes due note of the structures that exist to combat trafficking in children. However, it notes that, in her preliminary conclusions on her mission to Gabon, the Special Rapporteur on trafficking in persons observes that the coordination of action against trafficking remains weak, particularly among public institutions and between the central administration and local communities. ***The Committee, therefore, requests the Government to intensify its efforts to strengthen the capacity of the watchdog committees and their coordination with the Council to Prevent and Combat the Trafficking of Children and the Monitoring Committee, so as to ensure the application of the national legislation against trafficking in children for sexual or economic exploitation. It requests the Government to provide information on the progress achieved in this respect. It also asks the Government to continue providing information on the number of child victims of trafficking identified and protected by the watchdog committees.***

2. *Labour inspection.* The Committee noted previously that, under Decree No. 007141/PR/MTE/MEFBP of 22 September 2005, the labour inspector may immediately draw up a notification of any violations relating to the trafficking of children. It noted that the Conference Committee on the Applications of Standards, in its conclusions in June 2007, asked the Government to strengthen the authority of the labour inspection services to enforce the law and to increase their human and financial resources. The Committee on the Application of Standards further asked the Government to ensure that regular inspections are carried out by the labour inspectorate. In this respect, the Committee noted that, under section 178 of the Labour Code, as amended by Ordinance No. 018/PR/2010 of 25 February 2010, labour inspectors are required to report any evidence of the exploitation of children for the purposes of labour. ***Noting the absence of information on this point in the Government's report, the Committee once again requests it to provide 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 (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, are 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 the 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 notes the information provided by the Government concerning the “National manual of procedures for the care of child victims of trafficking”, which sets out a series of procedures and duties required of all actors called upon to play a role in the return of child victims of trafficking to their country of origin or their social integration. The Government indicates that in 2011 the Monitoring Committee trained social workers with a view to providing them with sound knowledge of the rules contained in the manual on the identification and removal of victims of trafficking, and on their administrative and psycho-social care. The Government adds that the administrative authorities have identified around ten victims, who have received care in reception centres, and that ten children (one boy and nine girls) have been repatriated with the collaboration of their countries of origin. However, the Committee notes that, according to the Special Rapporteur on trafficking in persons, although the Government offers victims of trafficking access to reception centres, there is a discrepancy between those who need assistance and those who actually receive it in public reception centres, which only take in children under the age of 12 years. ***The Committee, therefore, firmly encourages the Government to continue taking immediate and effective measures for the removal of child victims of sale and trafficking, and requests it once again to provide information on the number of children under 18 years of age who have in practice been removed from this worst form of child labour and placed in reception centres.***

*Article 8. International cooperation.* The Committee emphasized previously that, during the discussion which took place in the Conference Committee on the Application of Standards in June 2007, the Government representative indicated that consideration was being given to 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. It noted that the Government had signed the Multilateral Regional Cooperation Agreement against the Trafficking of Children in West and Central Africa in July 2006 (the 2006 Regional Cooperation Agreement), and that a bilateral agreement relating to trafficking in children was being negotiated with Benin. The Committee requested the Government to continue providing information on the measures taken to give effect to the 2006 Regional Cooperation Agreement and expressed the hope that the bilateral agreement on trafficking in children with Benin would be concluded in the near future.

The Committee notes the absence of information on this point in the Government’s report. However, it observes that, although the Special Rapporteur on trafficking in persons, in her preliminary conclusions, welcomes the Government’s intention to sign bilateral agreements on trafficking in persons with several neighbouring countries, the conclusion of memoranda of understanding has not yet taken place in practice. The Special Rapporteur observes that, with a maritime border of over 800 kilometres and a porous frontier with three countries, Gabon is in need of sound cooperation with its neighbours to combat the phenomenon of trafficking. ***The Committee, therefore, firmly encourages the Government to intensify its efforts to ensure that bilateral agreements on trafficking in persons, with Benin and other neighbouring countries, are concluded in the very near future, particularly with a view to strengthening the numbers of border police. It requests the Government to provide information in its next report on the progress achieved 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 trafficking in children in the country was emphasized in the discussion in the Committee on the Application of Standards in 2007. In this respect, the Government representative indicated that the Government would carry out an analysis of the national situation concerning trafficking in children in Gabon and a mapping of trafficking routes and areas in which forced labour involving children was practiced would be carried out as soon as the necessary resources allowed.

The Committee notes the Government’s indication that it will present the study on the situation of trafficking in children as soon as it has been conducted. It also notes the Government’s indications that Decree No. 0191/PR/MFAS establishing a Child Protection Indicators Matrix (MIPE) was adopted on 22 May 2012, with a view to creating a guidance tool for measures intended to help the Government to follow trends in the problems related to the rights of the child. This tool, which is one of the means used by the National Observatory of the Rights of the Child (ONDE), established by Decree No. 0252/PR/MFAS of 19 June 2012 organizing the social assistance and family protection implementation scheme, is intended to ensure the availability on a permanent basis in Gabon a database of precise statistics on child protection.

However, the Committee notes the remark by the Special Rapporteur on trafficking in persons, in her preliminary conclusions, that she had noted in Gabon the absence of a corpus of reliable national data for the determination of the prevalence rate, forms, trends and manifestations of trafficking in persons.

***Observing that the Government has been referring to the study on the situation of trafficking in children in Gabon for several years, the Committee urges it to take the necessary measures to ensure that the study on the situation***

*of trafficking in children in Gabon is undertaken in the very near future, and requests the Government to provide information in its next report on the progress achieved in this respect. The Committee also requests the Government to provide information on the activities of the ONDE and on the statistics gathered by the ONDE through the MIPE on children under 18 years of age engaged in the worst forms of child labour.*

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 21 September 2012.

*Article 2(1) and (3) of the Convention and Part V of the report form. Minimum age for admission to employment, compulsory education 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. It had noted that the child labour estimates of the Multiple Indicator Cluster Survey (MICS), UNICEF 2005, indicated an important drop in the percentage of children involved in labour, from 30 per cent in 1999 to 18 per cent in 2005. The Committee had further noted the Government's information that education was one of its priorities and that it had taken a number of steps to strengthen the educational system and the school attendance of children, through increasing expenditure on general education and renovating more than 300 public schools under the "Public Schools Rehabilitation Programme". The Committee noted that as per 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 had requested 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.

The Committee notes the Government's statement that Georgia has a strong tradition of education with almost universal primary school enrolment rates across the country. Hence the possibility of children being involved in child labour is very low. The Committee also notes the Government's indication that in order to ensure the well-being of street children, an inter-agency commission was created which elaborated a new strategy to protect street children. Furthermore, the Government has implemented a voucher system for street children, enabling them to receive financial support. The Committee notes that according to the UNICEF report entitled "Georgia and the Convention on the Rights of the Child, 2011", the primary net attendance ratio for 2010 was 93 per cent which indicates that 20,000 primary school-aged children were not enrolled in school while the net attendance ratio at the secondary level was 86 per cent. The Committee further notes that according to the UNICEF study report on street children of 2009, there was an average of 1,049 street children in the four cities of Tbilisi, Kutaisi, Rustavi and Batumi where the study was conducted, of which 66 per cent was children between the ages of 5–14 years. ***The Committee encourages the Government to pursue its efforts in the field of education by taking measures to enable children to attend and complete compulsory education and to ensure free basic education to all children, particularly street children. It requests the Government to provide information on the measures taken in this regard and the results achieved.***

*Article 2(1). 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 that section 4(2) of the Labour Code permits the employment of children below 16 years, on the condition that such work is not against their interests, does not damage their moral, physical or mental development or limit their right and ability to obtain elementary, compulsory and basic education, and upon the consent from their legal representative, tutor or guardian.

The Committee had noted the comments made by the GTUC that the Labour Code applied 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.

In this context, the Committee had noted the Government's reference 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 had further stated 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. Observing 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 had requested 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.

The Committee notes the comments made by the GTUC that according to the data of the Department of Statistics, the number of self-employed minors is much higher than that of those employed in the formal sector. The GTUC further states that child labour is widespread in various regions of Georgia during the crop period in the agriculture sector.

The Committee notes the Government's indication that in order to enhance the rights of a child, the Government is currently exploring the possibility to more precisely address the minimum age provisions as well as restrictions on working hours of children in Georgia's labour laws. ***The Committee expresses the firm hope that the Government, in its attempt to address more precisely the minimum age provisions under the Labour Code, will take the necessary measures to ensure the application of the Convention to all branches of economic activity, including family undertakings and small-scale holdings and cover all types of employment, whether hired or self-employed, in order to bring the national legislation into conformity with the Convention. It requests the Government to provide information on any progress made in this regard.***

*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 also noted 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 had noted that section 18 of the Labour Code which prohibits night work (10 p.m. to 6 a.m.) by young persons if read in conjunction with section 4(2) 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 drew the Government's attention 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. Noting that the Labour Code allows children between 14 and 16 years to perform light work under the conditions specified under section 4(2) of the Labour Code, the Committee had urged 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.

The Committee notes the Government's indication that it is attempting to review the Labour Code for further enhancement of the provisions regarding restrictions on working hours of children. The Committee expresses its ***concern*** that the national legislation allows children between the ages of 14 and 16 years to work for eight hours a day. ***The Committee therefore urges the Government to take the necessary measures in the near future to determine the light work activities that may be undertaken by children of 14 years and above and the number of hours during which, and the conditions in which, such work may be undertaken.***

*Article 8. Artistic performances.* The Committee had previously noted the 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, were well protected under the Labour Code and therefore no separate method of issuance of permits for artistic performances had been set up. The Committee had noted 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. Observing that there were no provisions under the Labour Code which limit the number of working hours or set maximum working hours or conditions for employment of young persons who participate in artistic performances, 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.

The Committee notes the Government's reference to section 4(2) of the Labour Code which states that the labour capacity of a child below 16 years shall be concluded only with the consent of his/her legal representative, tutor or guardian, if it is not against his/her interests, does not damage his/her moral, physical or mental development and does not limit his/her right and ability to obtain elementary, compulsory and basic education. It further notes the Government's statement that accordingly, the activities in which employment or work may be permitted for an under-age person and the number of hours of such work may be defined as per the consent of the child's legal representative, tutor or guardian. The Committee once again recalls 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 in individual cases

by the competent authority and not just with the consent of the parent or legal guardian 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 therefore requests the Government to indicate whether the labour contracts or certificates of consent concluded under section 4(2) and (3) of the Labour Code which allow children below the minimum age (15 years) to participate in sport, art, cultural and advertising activities and which lay down the conditions and the number of hours during which such activities may be undertaken, are granted by the competent authority. It also requests the Government to provide a copy of such labour contracts or certificates along with its next report.***

*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. It had noted 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 had noted the Government's indication that the police are responsible for the monitoring of infringements related to child labour. While noting that the Government's report contained 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 observed that these did not relate to infringements of the Labour Code related to child labour. It had observed with concern that there existed no public authority to monitor the implementation of the child labour-related provisions in the country and therefore urged the Government to take the necessary measures to ensure the effective monitoring and implementation of the provisions giving effect to the Convention.

The Committee notes the Government's information that the competencies of the Patrol Police Department and district police units are divided according to regions/districts of Georgia. It notes the Government's information that the district police inspectors who keep information about minors within the area of their coverage, visit families of minors to make them aware of their rights. Furthermore, the district police inspectors also conduct classes for school teachers on children's rights and their infringement. The Government further states that the Ministry of Education and Science (MoES) is responsible for monitoring the security of school children and also to provide legal consultations to teachers, parents and children. The Committee also notes the Government's information that the Department of Social Protection within the Ministry of Labour, Health and Social Assistance (MOLHSA) focuses on policy recommendations related to rights of children, including child labour. Furthermore, the Social Issues and Programmes Division within this department receives and forwards complaints of child labour violations to the Social Service Agency within MOLHSA and law enforcement agencies for further investigations. ***The Committee requests the Government to provide information on the number of violations detected by the district police inspectors as well as the number of complaints received by the Social Issues and Programmes Division related to child labour.***

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 its communication of 16 May 2011, as well as the communication of the Greek General Confederation of Labour (GSEE) dated 28 July 2011.

*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 the Government's indication that the employment of adolescents in dangerous work, as provided for by section 7(5) of Presidential Decree No. 62/1998, may only be permitted under certain conditions, such as the performance of these tasks under the supervision of the safety technician and/or labour physician or the Protection and Prevention Services in order to ensure the protection of these adolescents' health and safety. However, the Committee notes once again with *concern* that Presidential Decree No. 62/1998 continues to permit the performance of hazardous work by persons as of the age of 15 years, pursuant to sections 2(c) and 7(5). ***The Committee therefore once again 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 that no person under 16 years of age may be authorized to perform hazardous work under any circumstance. In this regard, it once again 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.***



*Article 6. Apprenticeship and conditions of employment.* The Committee previously noted 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 noted the adoption of Act No. 3863/2010 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 memoranda with regard to structural policies on strengthening labour markets. The Committee noted the statement in the previous 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 Labour Agreement, and from the generally binding provisions on minimum wages and conditions of work. The GSEE further alleged that, pursuant to Act No. 3863/2010, minor workers of 15 to 18 years of age 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. 3863/2010). The GSEE stated 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 drew 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 requested 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).

The Committee notes the Government's information, in its communication of 16 May 2011, concerning the conditions of apprenticeship contracts. According to section 74(9) of Act No. 3863/2010, employers are given an incentive to conclude special apprenticeship contracts of up to one year's duration with young persons aged between 15 and 18 years, in order for them to acquire skills and professional experience and ease their entry into the labour market. Apprenticeships are paid at a rate of 70 per cent of the minimum wage provided for by the National General Collective Labour Agreement. The period of apprenticeship for persons aged over 16 years cannot exceed eight hours per day and 40 hours per week, while those who are under 16 years of age cannot work for more than six hours per day and 30 hours per week. Moreover, the apprenticeship cannot take place between 10 p.m. and 6 a.m.

The Committee notes the Government's information in its report that, in accordance with Cabinet Decree No. 6 of 28 February 2012 on the "Regulation of issues concerning the application of article 1(6) of Act No. 4046/2012", the statutory minimum wages and salaries for young persons aged below 25 years have been reduced by 32 per cent, and section 74(9) of Act No. 3863/2010 has been amended only with regard to the remuneration of apprentices, which now amounts to 68 per cent of the minimum wage and salary thresholds, but retains all other requirements and conditions of employment.

The Committee notes the allegation of the GSEE according to which new provisions allow the employment of young workers of 18 to 25 years of age under apprenticeship contracts of prolonged duration – 24 months – while excluding young workers from the scope of minimum wage standards.

However, the Committee once again recalls that Paragraph 12 of the Minimum Age Recommendation, 1973 (No. 146), provides 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. Moreover, the Committee recalls that, by virtue of *Article 6* of the Convention, apprenticeships may be permitted for persons of at least *14 years* of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned. In this regard, the Committee observes that children under 18 years of age performing apprenticeships may not do so at night and may not perform overtime. Moreover, the Committee observes that children appear to always be under the supervision of the professionals who train them. The Committee therefore observes that there appear to be adequate safeguards to protect apprentices under the age of 18 years from hazardous work.

With regard to the issue of the provision of fair remuneration and its protection, the Committee refers to its comments made under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

*Part V of the report form. Application of the Convention in practice. Labour inspection.* Following its previous comments, the Committee notes the Government's information that in 2010 the labour inspectorate recorded three complaints of illegal employment of under-age persons and imposed four fines, while in 2011 it recorded two complaints of illegal employment of under-age persons and imposed 21 fines. The Government further indicates that 1,462 young

persons (between the ages of 15–18) were permitted to work in 2009, pursuant to Act No. 3850/2010 on the ratification of the code of laws on workers' health and safety, and 874 such young persons in 2011. *The Committee requests the Government to continue to provide information on the manner in which the Convention is applied, including, for example, statistical data on the employment of children and young persons, extracts from the reports of inspection services and information on the number and nature of violations detected and penalties applied involving children and young persons.*

## Guatemala

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1990)**

*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 statistics on child labour in Guatemala and expressed concern at the number and situation of children under 14 years of age who work. It noted the development by the Government, in collaboration with ILO–IPEC, of a “roadmap” to ensure that Guatemala is a country free from child labour and its worst forms, as well as the results of the programme *Mi Familia Progresá*. It also observed that the Committee on the Rights of the Child, in its concluding observations of 25 October 2010, regretted that the implementation of the various initiatives to address violations of children’s rights was insufficient and suffered from a lack of adequate evaluation due to institutional weaknesses and the inadequate allocation of resources (CRC/C/GTM/CO/3-4, paragraph 19). In these circumstances, the Committee urged the Government to intensify its efforts to ensure the progressive elimination of child labour, including through strengthening the labour inspectorate.

The Committee notes the extracts from the reports of the inspection services and information on the number and nature of the violations reported for 2011. It observes that the labour inspection services identified two children under 14 years of age engaged in work.

The Committee notes from the Government’s report on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), that the Government has developed a plan of action which puts forward detailed measures to implement the “roadmap” to ensure that Guatemala is a country free from child labour and its worst forms. The Committee notes, on the basis of the report of June 2012 on the ILO–IPEC project entitled “Eliminating child labour in Latin America (Phase IV)”, that the Ministry of Labour in collaboration with ILO–IPEC is developing a monitoring and evaluation system to measure the results and impact of the implementation of the roadmap. The Committee likewise notes from the information provided by the Government on the application of Convention No. 182, that in 2011 the Government’s National Commission for the Eradication of Child Labour (CONAPETI) established inter-agency committees for the eradication of child labour in the 22 departments of the country, which aim to prevent, identify and reduce child labour at the local level. It notes the plan for the institutional strengthening of these inter-agency committees, which provides for a detailed strategy, planned activities, and indicators for measuring results.

However, the Committee notes the statistics of the Understanding Children’s Work project, based on the 2011 results of the National Study of Living Conditions in Guatemala (ENCOVI), according to which 13.4 per cent of children between 7 and 14 years of age are engaged in economic activity (8.4 per cent of girls and 18 per cent of boys in this age group). Of these children, 39.4 per cent are exclusively working, whereas 17.3 per cent are working and attending school. The agricultural sector is the branch of economic activity with the most child workers (68.3 per cent), followed by services (18.3 per cent) and manufacturing (12 per cent). The 2010 UNICEF statistics indicate that 21 per cent of children between the ages of 5 and 14 are working.

*While noting the measures taken by the Government, the Committee expresses concern at the large number of children who work and who are below the minimum age for admission to employment or work, and again urges the Government to intensify its efforts to ensure the progressive elimination of child labour. It requests the Government to take practical measures to strengthen the capacity and expand the reach of the labour inspectorate in its action to prevent and combat child labour, taking into account its important role for the purpose of monitoring the implementation of the minimum age for employment. In this regard, the Committee also requests the Government to provide information on the results achieved in the context of the implementation of the roadmap to ensure that Guatemala is a country free from child labour and its worst forms. The Committee also requests the Government to continue to provide information on the manner in which the Convention is applied in practice, based in particular on statistics on the employment of children under 14 years of age, extracts from the reports of the inspection services and information on the number and nature of the violations reported and the sanctions imposed.*

*Article 3(1).* Minimum age for admission to hazardous work. In its previous comments, the Committee noted that section 148(a) of the Labour Code prohibits work by minors in unhealthy and dangerous workplaces. However, it observed that the Labour Code does not define the term “minor” and that it is therefore impossible to determine the minimum age from which a minor may be admitted to perform hazardous work. In this respect, it noted that section 4 of the draft reform of the Labour Code (Initiative No. 4205) envisaged the revision of section 148(a) so as to prohibit the engagement of young persons under 18 years of age in various types of hazardous work. The Committee also noted that section 32 of Government Agreement No. 112-2006 of 7 March 2005 issuing Regulations on the protection of children

and young persons at work prohibits work by children and young persons under 18 years of age in various types of hazardous work.

The Committee notes Government Agreement 250-2006 regulating the application of ILO Convention No. 182, which in section 7 provides a detailed list of the types of hazardous work prohibited for children under 18 years of age. The Committee also notes the official statement by the labour inspectorate, which while recalling ILO Convention No. 138 and section 148 of the Labour Code, declares the prohibition of any employment or work which is likely to jeopardize the health, safety and morals of persons under 18 years of age, and contains a detailed list of types of employment which, due to their nature or condition, are considered hazardous for minors. Yet, the Committee notes that the Government's report contains no information about the draft reform of the Labour Code.

***In order to ensure that the law is unambiguous on this point, the Committee requests the Government to take the necessary steps to harmonize the provisions of the Labour Code with Agreement No. 112-2006, Agreement No. 250-2006 and the declaration of the labour inspectorate. To this end, the Committee expresses the firm hope that the draft reform of the Labour Code will be adopted in the very near future so that the national legislation is in conformity with the Convention on this point. It again requests the Government to provide information on the progress achieved in this regard.***

*Article 6. Apprenticeship. Age of admission to apprenticeship.* The Committee noted previously that section 171 of the Labour Code does not establish a minimum age for admission to apprenticeship. It also noted that, by virtue of section 150 of the Labour Code, the General Labour Inspectorate can issue a written authorization allowing daily work by minors under 14 years of age. This authorization must state that the minor will be working as an apprentice. The Committee also pointed out that a reading of section 24 of the Regulations on the protection of children and young persons at work and section 2 of Decree No. 27/2003 issuing the Act on the comprehensive protection of children and young persons suggests that the age of admission to apprenticeship is 13 years. For its part, the Government indicated that the Special Labour Inspectors Unit provides the basis for the application of *Article 6* of the Convention by providing that no minor under 14 years of age may be a party to an apprenticeship contract. The Committee noted the Government's indication that the Tripartite Committee on International Labour Affairs had started a review of the national labour legislation and that the issue of the minimum age for admission to apprenticeship would be brought to its attention.

The Committee notes that the Government's report contains no information relating to the reform of the national labour legislation on the issue of the age of admission to apprenticeship. ***The Committee therefore again urges the Government to take the necessary measures to harmonize the provisions of the national legislation with Article 6 of the Convention so as to establish a minimum age for admission to apprenticeship of 14 years. It requests the Government to continue to provide information on the progress achieved in this respect in its next report.***

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)**

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children for commercial sexual exploitation and the penalties applied.* The Committee previously noted the adoption of the Law against sexual violence, exploitation and trafficking in persons (Decree No. 9/2009). It noted the sanctions prescribed by the Law, as well as the statistics provided by the Government relating to the application in practice of these new provisions. The Committee observed that no sanctions appeared to have been applied for the crime of trafficking of children between 2008 and 2009 and that also the Committee on the Rights of the Child (CRC), in its concluding observations of 25 October 2010 expressed concern at the lack of convictions for sexual exploitation since the adoption of Decree No. 9/2009, and at the tolerance of the competent authorities in relation to trafficking (CRC/C/GTM/CO/3-4, paragraph 94). The Committee expressed concern at the information bearing witness to the persistence of the problem of the trafficking of children under 18 years of age for their commercial sexual exploitation and at the allegations of the complicity between officials entrusted with the enforcement of the law and persons engaging in the trafficking of persons. In this regard, it urged the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions were carried out against the perpetrators and requested it to provide detailed information on the number of investigations conducted, and prosecutions and convictions applied.

The Committee notes the statistics available on the website of the National Centre for Analysis and Legal Documentation as regards the application of section 202ter and section 202 quarter of the Penal Code, as amended by Decree No. 9-2009 issuing the Act against sexual violence, exploitation and trafficking in persons. The Committee notes that 294 cases concerning trafficking in persons were brought to the attention of the judicial bodies during the period 2009–April 2012, of which 86 concerned girls and 20 concerned boys under the age of 18. 38 judgments were rendered resulting in ten convictions. Yet the information does not specify how many judgments and sentences concerned the sale and trafficking of children under 18 years of age for commercial sexual exploitation and of officials who are complicit in such acts, nor the types of sanctions applied.

The Committee notes, on the basis of the report of June 2012 on the ILO–IPEC project entitled “Eliminating Child Labour in Latin America (Phase IV),” that the Government through Agreement 1-2012 established a prosecution office specialized in trafficking in persons and that the judiciary set up specialized courts for exploitation and trafficking to ensure specialized expertise of the judges.

***While noting the statistics on the application of Decree No. 9/2009, as well as the measures taken to reinforce the prosecution of trafficking and commercial sexual exploitation offences, the Committee requests the Government to pursue its efforts to ensure that thorough investigations and robust prosecutions are carried out against the perpetrators of trafficking of children under 18 years of age for commercial sexual exploitation, and of officials who are complicit in such acts. It also requests the Government to continue to provide information on the number of investigations, prosecutions, convictions and sanctions imposed against persons who engage in the sale and trafficking of children under 18 years of age for commercial sexual exploitation.***

*Article 3. Worst forms of child labour. Clause (d). Hazardous types of work. Production and handling of explosive materials and products.* The Committee previously noted the measures adopted by the Government to combat child labour in the fireworks industry. It also noted that national legislation prohibits work by persons under 18 years of age in the manufacture, preparation and handling of explosive substances or products and the production of explosives or fireworks. It requested the Government to continue to provide information on the number of inspections carried out by the labour inspection services in firework factories, as well as the nature of the violations reported and the penalties imposed as a result of such inspections.

The Committee notes from the information provided by the Government that many factories manufacturing fireworks have disappeared, due to the stringent legislation in this regard and many factories have therefore favoured homework. The Committee also notes the Government's indication that the labour inspectorate has only managed to visit ten factories in 2011, since the population of the places where most factories manufacturing fireworks are concentrated have prevented surveillance by the labour inspectorate out of fear of becoming unemployed. In 2011, the labour inspectorate did manage to carry out 167 visits of distribution centres of fireworks. The Committee notes that a total of 16 contraventions were found and presented to the Labour Tribunal, the resolution of which is currently still pending.

***Noting the Government's information that firework production has been largely moved from the factory premises to work carried out at home, the Committee urges the Government to take immediate and effective measures to ensure that persons under 18 years of age are not engaged in the manufacturing, preparing and handling of explosive substances or products and the production of explosives or fireworks at home. The Committee requests the Government to provide information on the concrete measures taken and results achieved in this regard. In addition, it urges the Government to step up its efforts to carry out labour inspections in all firework factories. It requests the Government to provide information on the number of inspections carried out in this regard, as well as the nature of the violations reported and the penalties imposed as a result of such inspections.***

*Article 6. Programmes of action. National Plan of Action to Combat the Commercial Sexual Exploitation of Children.* In its previous comments, the Committee noted that the National Plan of Action to Combat the Commercial Sexual Exploitation of Children was being revised. The Committee observed that, in the Government's reports submitted to the CRC on 23 November 2009 (CRC/C/GTM/3-4, paragraphs 255–256), the Government indicated that the National Plan of Action to Combat the Commercial Sexual Exploitation of Children had been adopted as official policy by the Secretariat of Social Welfare, but that the secretariat had not been able to implement the Plan and, in view of the inadequacy of the budget allocated, it was only able to implement programmes for the children of female sex workers in the area around the airport. The Committee requested the Government to provide information on the programmes of action developed as part of the implementation of the National Plan.

***Noting that the Government's report again does not provide information on this point, the Committee once again urges the Government to adopt immediate and effective measures to ensure the implementation of the National Plan of Action to Combat the Commercial Sexual Exploitation of Children. It requests the Government to provide information on this subject in its next report.***

*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 labour and ensuring their rehabilitation and social integration. Commercial sexual exploitation and trafficking for that purpose.* In its previous comments, the Committee noted the adoption in 2007 of a "Public Policy to combat the Trafficking of Persons and Ensure the Full Protection of Victims and a National Plan of Strategic Action (2007–17)", with the objectives of the immediate and full protection of victims, namely medical and psychological care and reintegration into the family and society. It also observed that the CRC, in its concluding observations of 25 October 2010 noted with concern that the competent authorities did not provide specialized or appropriate care for victims of trafficking and sexual exploitation and that the Government did not provide appropriate support to organizations working in this field (CRC/C/GTM/CO/3-4, paragraph 94). The Committee requested the Government to take time-bound measures to prevent the commercial sexual exploitation of children and provide direct assistance to children to remove them from these worst forms of child labour.

The Committee notes the information provided by the Government in its report concerning the results of the project *Conrado de la Cruz* carried out by the Ministry of Labour and Social Welfare. Between September 2011 and January 2012 the project reached out to a total of 11,175 children to prevent their engagement in child labour; 4,575 children below the minimum age for employment (14) were reintegrated in the education system and received funding for this purpose and 417 children above 14 years old received vocational and technical education. In addition, numerous information activities have been organized to raise awareness about child labour, in particular its worst forms, existing protection measures, in particular for vulnerable children.

The Committee also notes from the Government's report on the application of the Forced Labour Convention, 1930 (No. 29), that, in the context of the implementation of the "Public Policy to combat the Trafficking of Persons and Ensure the Full Protection of Victims and a National Plan of Strategic Action (2007–17)", the Secretariat against Sexual Violence, Exploitation and Trafficking of Persons (SVET) has been established. The SVET, which started its operations in 2011, has been created to ensure compliance with the Law against sexual violence, exploitation and trafficking in persons (Decree No. 9/2009) and to coordinate and supervise Government policies and programmes in this respect. The Committee notes that the first activities of the SVET have focused on prevention and so far 49 seminars and conferences for different Government institutions, inter alia, the Ministry of Education, the Ministry of Health and the labour inspectorate, have been carried out.

*While noting the measures taken by the Government, the Committee requests the Government to continue its efforts to take effective and time-bound measures to prevent and remove children from the worst forms of child labour, in particular from becoming victims of commercial sexual exploitation or trafficking for that purpose; and to provide the necessary and appropriate direct assistance to remove the child victims from these worst forms of child labour. In this regard, the Committee requests the Government to continue to provide information on the measures adopted or envisaged as part of the implementation of the "Public Policy to combat the Trafficking of Persons and Ensure the Full Protection of Victims and a National Plan of Strategic Action (2007–17)".*

*Article 8. International cooperation. Trafficking of children for commercial sexual exploitation.* In its previous comments, the Committee noted that the CRC, in its concluding observations of July 2007 (CRC/C/OPSC/GTM/CO/1, paragraph 29), while recognizing the conclusion of memorandums of understanding with neighbouring countries of Guatemala, expressed concern at the fact that undocumented foreign children, including victims of trafficking, are subject to deportation and must leave the country within 72 hours. The Committee also noted the Government's indication that a new Inter institutional Protocol for the repatriation of victims of trafficking was adopted in December 2009. While observing that the Protocol was not yet implemented in practice, the Committee requested the Government to provide information on the measures taken to implement the Protocol.

While the Government's report contains no information on the implementation of the Protocol, the Committee notes from the Government's report on the application of Convention No. 29 that one of the tasks of the SVET is to promote the conclusion and implementation of bilateral and multilateral agreements to ensure international protection of victims.

*In these circumstances, the Committee once again requests the Government to provide information on the measures taken to ensure the rehabilitation and social integration of child victims removed from trafficking for commercial sexual exploitation in their country of origin in the context of the implementation of the Inter-institutional Protocol for the repatriation of victims of trafficking and the activities of the SVET.*

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

## Guinea

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Article 3 of the Convention. Worst forms of child labour.* The Committee noted previously the information provided by the Government that it had taken urgent measures to bring the national legislation into conformity with the provisions of international instruments on children ratified by the country. The Committee hoped that the legislative reforms undertaken by the Government would be adopted in the very near future and requested it to provide information in this respect.

The Committee notes with *interest* the adoption of the Guinean Children's Code (Act No. L/2008/011/AN) of 19 August 2008.

*Articles 3(a) and 4(1) and (3). All forms of slavery or practices similar to slavery and determination and revision of the list of types of hazardous work. Sale and trafficking of children and hazardous types of work.* Further to its previous comments, the Committee notes with *satisfaction* that sections 385 to 396 of the Children's Code of 2008 effectively prohibit trafficking in persons, including children, for sexual exploitation or for the exploitation of their labour. Section 386 provides that anyone who engages in or is an accomplice to trafficking in children shall be liable to a sentence of imprisonment from three to ten years and a fine from 1 to 3.5 million Guinea francs (GNF).

The Government adds that a Bill prohibiting child labour and trafficking is currently being prepared. The Committee notes the Government's indication that this new Bill includes provisions bringing the national legislation into conformity with the Convention with regard to hazardous work and that, to that effect, the list of hazardous types of work has been reviewed in relation to the various sectors. *The Committee requests the Government to provide information on the progress achieved in the preparation of the Bill prohibiting child labour and trafficking and to provide a copy once it has been adopted, including the duly revised list of hazardous types of work.*

*Article 3(a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict.* Further to its previous comments, the Committee notes with *satisfaction* that section 429 of the Children's Code of 2008 provides that no child under 18 years of age shall participate in hostilities, directly or indirectly, or be

enrolled into the armed forces or an armed group, under penalty of imprisonment from two to five years and a fine from GNF50,000 to GNF500,000.

*Article 3(b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee notes with **satisfaction** that sections 359 and 360 of the Children's Code prohibit the production, offering, dissemination, procuring, possession and representation of any pornography involving the performance by children of explicit sexual activities, whether real or simulated, or any representation of the sexual organs of a child, under penalty of imprisonment from one to five years and a fine from GNF300,000 to GNF1 million. It also observes that section 383 of the Children's Code provides that the act of directly causing a child to transport, hold in their possession, offer or provide drugs shall be punishable by imprisonment from one to five years and a fine from GNF250,000 to GNF1 million, or one of these penalties.

*Article 3(d). Hazardous types of work. Self-employed workers.* The Committee noted previously that, under the terms of section 187 of Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code (the "Labour Code"), apprentices and employed persons under 18 years of age may only be engaged in unhealthy or hazardous work under special conditions of protection determined by ministerial orders. The Committee noted that, under section 1(1), the Labour Code is applicable to workers and employers exercising an occupational activity in Guinea. However, it also noted that section 1(2) defines the term "worker" as "[...] any person who has undertaken to place her or his occupational activity [...] under the direction and authority of another person [...]". The Committee observed that, by virtue of this provision, the Labour Code does not apply to young persons under 18 years of age without contractual employment relations who perform hazardous types of work. It requested the Government to indicate the measures adopted to ensure that young persons under 18 years of age benefit from the protection afforded by *Article 3(d)* of the Convention.

The Committee notes with **satisfaction** that, under section 411 of the Children's Code, the worst forms of child labour are prohibited, including all 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. Under the terms of section 1 of the Children's Code, any human being aged under 18 years is a child.

*Article 7(1). 1. Penal sanctions.* The Committee notes that the Children's Code of 2008 establishes several sanctions in relation to cases of the worst forms of child labour envisaged in *Article 3(a) to (c)* of the Convention. The Committee also notes the Government's indications that in 2011 there were 13 cases of trafficking in persons, but that these cases are currently before the courts and that no convictions have yet been handed down. ***The Committee requests the Government to provide information on the number and nature of the violations of the Children's Code relating to the worst forms of child labour, and particularly trafficking in children for sexual exploitation or the exploitation of their labour, the investigations conducted, prosecutions, convictions and penalties imposed.***

*2. Sanctions.* The Committee noted previously that section 205 of the Labour Code establishes sanctions for those committing infringements of the Child Labour Order, and particularly for the employment of children in hazardous types of work.

The Committee further notes that section 428 of the Children's Code of 2008 provides that persons violating the prohibition to employ children under 18 years of age on work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals (section 411), shall be liable to the sanctions envisaged in the Labour Code to that effect. The Committee notes the Government's indication that no reports by the labour inspectorate refer to cases of child labour, as a result of which no court rulings exist imposing penalties under section 205 of the Labour Code. However, the Committee notes that, according to the report on the National Survey on Child Labour and Trafficking (ENTE) in Guinea of November 2011, conducted in collaboration with ILO/IPEC/SIMPOC and the National Statistical Institute of Guinea, 40.1 per cent of children between the ages of 5 and 17 years in Guinea, or 1,427,778 children, are engaged in types of work that are to be abolished, of whom 84.1 per cent are engaged in hazardous types of work, amounting to 33.7 per cent of children between the ages of 5 and 17 years (a total of 1,200,292 children). ***The Committee, therefore, requests the Government to take immediate measures to strengthen the capacity of the labour inspection services as a matter of urgency, so as to ensure adequate monitoring and detection of children under 18 years of age engaged in the worst forms of child labour, and particularly in hazardous types of work. The Committee also requests the Government to provide extracts from labour inspection reports relating to children engaged in hazardous types of work.***

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

## Haiti

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2007)***

The Committee notes the Government's report and the communication of the International Trade Union Confederation (ITUC) of 31 August 2011.

*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 the Committee on the

Rights of the Child had expressed deep concern at the number of cases of trafficking of children from Haiti to the Dominican Republic (CRC/C/15/Add.202, 18 March 2003, concluding observations, 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 situation with regard to the trafficking of persons and human smuggling in Haiti, which emphasized a trend for trafficking and human smuggling to become systematic in the country.

The Committee also noted 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, of 4 September 2009, paragraph 19) (report of the Special Rapporteur), a new trend has been observed with regard to the employment of children as domestic workers (designated by the Creole term *restavèks*). This consists of 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 observers to describe the phenomenon as trafficking, since parents are now handing their children over to strangers, whereas previously they entrusted the children to relatives. The Committee also observed that, according to a UNICEF press release of 15 October 2010, the number of child victims of trafficking had increased since the earthquake of January 2010, with traffickers taking advantage of the resulting chaos to prey on children who were lost or separated from their parents.

The Committee previously noted with interest the Government's information concerning the preparation and adoption of preliminary draft legislation on trafficking in persons, under the terms of which 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. The draft legislation provides that trafficking in children, defined as any persons under 18 years of age, constitutes an aggravating circumstance giving rise to liability to the maximum penalty established by law. However, the Committee observed that, in its concluding observations, the Committee on the Elimination of Discrimination Against Women (CEDAW) expressed concern at the fact that, despite the alarmingly high number of women victims of trafficking in Haiti, specific legislation criminalizing trafficking was still in draft form and had not yet been submitted to Parliament (CEDAW/C/HTI/CO/7, of 10 February 2009, paragraph 26). CEDAW observed that cases of trafficking might result in insufficient investigations, consequently leading to impunity for perpetrators.

The Committee notes the ITUC's allegations that smuggling and trafficking in children is continuing, particularly towards the Dominican Republic. The ITUC has gathered serious eyewitness reports of sexual abuse and violence, even including murder, against young women and young girls who have been trafficked, particularly by Dominican military personnel. The ITUC expresses concern at the fact that there does not appear to be a law under which those responsible for trafficking in persons can be brought to justice. The ITUC is launching an appeal to the Government of Haiti for every effort to be made to ensure that the draft legislation on trafficking and the protection of victims of trafficking is adopted as a matter of great urgency, in consultation with the social partners, and that resources are made available for its implementation.

The Committee notes the Government's indication that the absence of specific legislation on the smuggling and trafficking in persons constitutes a significant legal void. The Government adds that efforts are being made to prevent, punish and suppress trafficking in persons, but that these efforts have not up to now had any impact, as the draft legislation on smuggling and trafficking in persons has still not been adopted by Parliament. According to ILO/IPEC information, very little progress has been achieved in the adoption of the draft legislation. The Committee, therefore, expresses its *deep concern* at the situation and exploitation of children, and particularly young girls, who are victims of trafficking in Haiti, and at the fact that the draft legislation on smuggling and trafficking in persons does not appear to be in the process of being adopted. ***The Committee, therefore, requests the Government to take the necessary measures to ensure that the Bill on trafficking in children is adopted as a matter of great urgency and requests the Government to provide information on any further developments in this respect. It also urges the Government to take immediate and effective measures to ensure that in-depth investigations and effective prosecutions are completed with regard to persons who have engaged in delivering children under 18 years of age for sale or trafficking.***

*Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic labour.* In its previous comments, the Committee noted the situation of hundreds of thousands of *restavèk* children who are often exploited under conditions that qualify as forced labour. It noted that in practice many of these children, some of whom are 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 victims of 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 for the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhumane treatment of children (the Act of 2003). It noted that the prohibition set out in section 2(1) of the Act of 2003 covers the exploitation of children, including servitude, forced or compulsory labour, forced services and 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, without however establishing penalties for violations of its provisions. The Committee noted that the repealed provisions included section 341 of the Labour Code, under which a child from the age of 12 years could be entrusted to a family to be engaged in domestic work. The Committee nevertheless observed that section 3 of the Act of 2003 provides that a child may be entrusted to a host family in the context of a relationship of assistance and solidarity.

The Committee noted previously that the Special Rapporteur, in her report, expressed deep concern at the vagueness of the concept of assistance and solidarity and considered that the provisions of the Act of 2003 allow the practice of *restavèk* to be perpetuated. According to the report of the Special Rapporteur, the number of children working as *restavèk* is between 150,000 and 500,000 (paragraph 17), which represents about one in ten children in Haiti (paragraph 23). Following interviews with *restavèk* children, the Special Rapporteur ascertained that all of them were given heavy workloads by their host families, which were 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 of civil society pointed out that cases of children being beaten and burnt were routinely reported (paragraph 37). The Committee noted that, in view of these findings, the Special Rapporteur described the *restavèk* system as a contemporary form of slavery.

The Committee notes the ITUC's allegations that the earthquake of 12 January 2010 resulted in an abrupt deterioration in the living conditions of the population of Haiti and increasingly precarious working conditions. According to the ITUC, an increasing number of children are engaged as *restavèk* and it is highly probable that their conditions have deteriorated further. Many of the eyewitness accounts gathered by the ITUC refer to extremely arduous working conditions, and exploitation is often combined with degrading working conditions, very long hours of work, the absence of leave and sexual exploitation and situations of extreme violence.

The Committee notes the Government's recognition that the engagement of *restavèk* children in domestic work is similar to forced labour. It once again expresses **deep concern** at the exploitation of children under 18 years of age in domestic work performed under conditions similar to slavery and in hazardous conditions. It once again reminds the Government that, under the terms of *Article 3(a) and (d)* of the Convention, work or employment by children under 18 years of age under conditions that are similar to slavery or that are hazardous comprise the worst forms of child labour and, under the terms of *Article 1*, are to be eliminated as a matter of urgency. ***The Committee requests the Government to take immediate and effective measures to ensure in law and practice that children under 18 years of age are not engaged as domestic workers under conditions similar to slavery or in hazardous conditions, taking into account the special situation of girls. In this respect, it urges the Government to take the necessary measures to amend the provisions of the national legislation, and particularly section 3 of the Act of 2003, which allow the continuation of the practice of restavèk. The Committee also requests the Government to take the necessary measures to ensure that in-depth investigations are conducted and effective prosecutions of persons subjecting children under 18 years of age to forced domestic work or to hazardous domestic labour, and that sufficiently effective and dissuasive penalties are imposed in practice.***

*Article 5. Monitoring mechanisms. Child protection brigade.* The Committee notes the ITUC's allegations that a child protection brigade (BPM) exists in Haiti protecting the borders. However, the ITUC indicates that the corruption of officials on both sides of the border has not been eradicated and that the routes for trafficking in persons avoid the four official border posts and pass through remote locations where more serious situations of abuse against the life and integrity of migrants probably occur.

The Committee notes the Government's indication that the BPM is a specialized police unit which arrests traffickers, who are then brought to justice. However, the Government adds that, during judicial inquiries, procedural issues are often used by those charged to escape justice. The Committee is bound to express **concern** at the weakness of the monitoring mechanisms in preventing the phenomenon of trafficking in children for exploitation. ***The Committee requests the Government to take the necessary measures to strengthen the capacity of the BPM to monitor and combat trafficking in children under 18 years of age and to bring those guilty to justice. It requests the Government to provide information on the measures adopted in this respect and the results achieved.***

*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.* In its previous comments, the Committee noted that, according to the United Nations Office on Drugs and Crime report of February 2009: *Global Report on Trafficking in Persons*, no system exists to provide the victims of trafficking with care or assistance, nor are there any reception centres for victims of trafficking. It also noted that CEDAW, in its concluding observations (CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 26), expressed concern at the lack of reception centres for women and girls who are victims of trafficking.

The Committee notes the ITUC's allegations that there is a public system of care and assistance for persons who are victims of trafficking. The reports gathered by the ITUC indicate that victims are referred to the police forces, which relay them to the Social Welfare and Research Institute (IBESR), which then places them in reception centres.

The Committee notes the Government's indication that a pilot social protection programme was envisaged, but that the earthquake of 12 January 2010 undermined the implementation of the programme. ***The Committee urges the Government to take effective measures for the provision of the necessary and appropriate direct assistance for the removal of child victims of sale and trafficking and for their rehabilitation and social integration. In this respect, it requests the Government to provide information on the number of children under 18 years of age who are victims of trafficking and who have been placed in reception centres through the police forces and the IBESR.***



*Clause (d). Identifying and reaching out to children at special risk. Restavèk children.* In its previous comments, the Committee noted the existence of programmes for the reintegration of *restavèk* children established by the IBESR in cooperation with various international and non-governmental organizations. It noted that these programmes focus on reintegration in the family setting with a view to promoting the social and psychological development of the children concerned. However, it noted that the Committee on the Rights of the Child, in its concluding observations, had expressed deep concern at the situation of *restavèk* children placed in domestic service and recommended that the Government take urgent steps to ensure that *restavèk* children are provided with physical and psychological rehabilitation and social reintegration services (CRC/C/15/Add.202, 18 March 2003, paragraphs 56 and 57).

The Committee notes the ITUC's indications that it has been informed of initiatives for the reintegration of *restavèk* children implemented, among others, with the support of UNICEF and the International Organization for Migration (IOM). While welcoming these initiatives, the ITUC calls on the Government to ensure that these programmes continue to be combined with measures intended to improve the living conditions of the families of origin of the children.

The Committee notes the Government's indication that cases of the ill-treatment of children in domestic service are taken up by the IBESR, which is responsible for placing them in families for the purposes of their physical and psychological rehabilitation. However, the Government recognizes that there are still only a few such cases. ***The Committee urges the Government to intensify its efforts to ensure that restavèk children benefit from physical and psychological rehabilitation and social integration services in the framework of programmes for the reintegration of restavèk children or through the IBESR. It requests the Government to provide information on the tangible results achieved in terms of the number of children who have benefitted from such measures. The Committee encourages the Government to ratify the Domestic Workers Convention, 2011 (No. 189), which has key provisions for child protection.***

*Article 8. International cooperation. Sale and trafficking of children.* The Committee previously noted that the Ministry of Social Affairs and Labour, in cooperation with the Ministry of Foreign Affairs, was studying the problem of the exploitation of persons in sugar cane plantations in the Dominican Republic and of children reduced to begging in that country, and intends to engage in bilateral negotiations with a view to resolving the situation. It also noted that CEDAW, in its concluding observations (CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 27), encourage 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 once again that the Government's report does not contain information on this subject. ***It once again requests the Government to provide information in its next report on the progress made in the negotiations for the adoption of a bilateral agreement with the Dominican Republic.***

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

## Honduras

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1980)**

*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 measures taken to combat child labour and the results achieved, particularly in the context of the implementation of the Plan of Action for the Elimination of Child Labour (2008–15). It noted the objectives, the components and the development of indicators to evaluate the implementation of the Plan of Action, as well as the daily workshops on rights and duties at work in relation to children and young persons, the involvement of the labour inspectorate, and the integration of a "child labour" module into household surveys carried out by the National Institute of Statistics (INE). Yet, the Committee raised concerns at the results of the 2010 INE household survey according to which 14.3 per cent of children and young persons between the ages of 5 and 17 are engaged in an economic activity and the UNICEF 2009 statistics indicating that 16 per cent of children between the ages of 5 and 14 are working. Due to the large number of children who are below the minimum age for admission to employment and who work, the Committee requested the Government to intensify its efforts to ensure the progressive elimination of child labour and provide information in this regard.

The Committee notes with *interest* the Government's indications as regards the measures taken to implement the Plan of Action for the Elimination of Child Labour (2008–15), which have included, inter alia, the appointment of 30 municipal child defenders in the departments of Valle, Copan and La Paz; the decentralization of activities to eliminate child labour through the establishment of four subregional technical advisory committees composed of workers' and employers' organizations, Government and civil society with coordinating authority on the local level in Choluteca, San Pedro Sula, Progreso and Ceiba; as well as other institutional changes.

The Committee notes that in order to achieve the objective to eliminate child labour by 2020 (set out in the Decent Work in the Americas: An agenda for the Hemisphere), the Government together with the ILO–IPEC formulated a Roadmap for the Prevention and Eradication of Child Labour and its Worst Forms. The Committee notes the Government's indications that the Roadmap provides the basis for strategic programming and the link between the different policies and measures that have a direct or indirect impact on the prevention and eradication of child labour. The Roadmap sets out action at the regional, subregional and local levels and contains dimensions on poverty, health,

education, the protection of rights, capacity building, awareness raising and the creation of knowledge base on child labour. The Committee notes that the Government through Executive Decrees PCM-011-2011 of February 2011 and PCM-056-2011 of August 2011, approved the Roadmap as national policy instructing all secretariats and their dependencies to incorporate the eradication of child labour into their institutional and strategic planning processes. The Committee notes from the Government's report and on the basis of the report of June 2012 on the ILO-IPEC project entitled "Eliminating Child Labour in Latin America (Phase IV)" that the Government has finalized the programming measures for 2012–14 to implement the Roadmap.

The Committee furthermore notes the Government's information provided in its report concerning the implementation of the conditional cash transfer programme "*Bono 10.000*" extending financial assistance to families with minors under 18 years of age conditional on children's school attendance and benefiting 345,000 families so far. The Committee also notes the Government's statement that in 2011 the Secretariat of Labour provided 492 daily workshops on rights and duties at work for children, young persons and their legal representatives, which were attended by 4,227 participants (compared to 2,528 participants between January 2009 and April 2010). Moreover, it notes the Government's indications as regards the labour inspectorate and its programme for the gradual and progressive eradication of child labour. In this regard, the Committee notes that according to the 2012 Report on Child Labour prepared by the Secretary of State in the Offices of Justice and Human Rights, 122 labour inspectors are working in the area of child labour dispersed over 17 regional offices. In 2011, 3,736 child labour inspections were carried out covering 72,488 persons, yet the abovementioned report indicates that no violations were found. The Committee raises *serious concern* about the lack of contraventions reported, all the more so because according to the 2010 UNICEF statistics (and 2009 statistics), 16 per cent of children between the ages of 5 and 14 years are working in Honduras, indicating a large number of children who work that are below the minimum age for admission to employment or work.

The Committee recalls that, pursuant to the Convention, the minimum age should apply not only to formal arrangements but also to the informal economy, which can be achieved through appropriate monitoring mechanisms, including labour inspections. *While noting the Government's efforts, the Committee requests the Government to take practical measures to further strengthen the labour inspectorate in its action to prevent and combat child labour, taking into account its important role for the purpose of controlling the implementation of the minimum age for employment. In this regard, the Committee requests the Government to continue to provide information on the manner in which the Convention is applied in practice, based in particular on statistics on the employment of children under 14 years of age, extracts from the reports of the inspection services and information on the number and nature of the violations reported and the sanctions imposed. The Committee also requests the Government to provide information on the results achieved through the implementation of the Plan of Action for the Elimination of Child Labour (2008–15) and the measures taken and results achieved in 2012–14 on the implementation of the Roadmap for the eradication of child labour.*

*Article 2(1) and (4). Scope of application.* The Committee previously noted that, under the terms of section 32(2) of the Labour Code, the authorities responsible for supervising work by persons under 14 years of age may permit them to work if they consider it indispensable in order to provide for their subsistence or that of their parents or brothers and sisters, and provided that it does not prevent them from following compulsory schooling. Furthermore, under the terms of section 2(1), agricultural and stock-raising undertakings that do not permanently employ more than ten workers are excluded from the scope of the Labour Code. It also noted that the Regulations on child labour of 2001, in accordance with sections 4–6, only apply to contractual labour relations. The Government indicated in this respect that a draft revision of the Labour Code had been prepared which contained provisions to bring the national labour legislation into conformity with the international Conventions ratified by Honduras, and therefore to harmonize the provisions of the Labour Code and the Regulations on child labour of 2001 with the Code for Children and Young Persons of 1996. The draft text would also allow the application of the provisions on the minimum age for admission to employment to all children, whether they are engaged under an employment contract or work on their own account. The Committee observed that the majority of children under 14 years of age work in agriculture, forestry, hunting and fishing.

The Committee notes that the Government's report again does not contain information on the situation regarding the legislative process for the adoption of the draft revision of the Labour Code. The Committee notes the Government's indications that the most recent laws concerning child labour, that is the Code for Children and Young Persons of 1996 and Regulations on Child Labour of 2001, which expressively prohibit under all circumstances the employment of children under 14 years of age (in its sections 120(2) and 15 respectively) are strictly applied. In this regard, the Committee recalls its earlier observation that the Regulations on Child Labour of 2001, in accordance with sections 4–6, only appear to apply to contractual labour relations and therefore would not cover children carrying out economic activities without an employment agreement, including self-employed children and children working in the informal economy.

The Committee recalls that, under the terms of *Article 2(1)* of the Convention, no one under the age specified shall be admitted to employment or work in any occupation, subject to the exemptions set out in *Articles 4–8* of the Convention. It also recalls that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not they are performed within the framework of an employment relationship or a labour contract, and whether or not the employment or work is paid.

*The Committee again urges the Government to take the necessary measures to harmonize the provisions of the Labour Code and the Regulations on Child Labour of 2001 with the Code for Children and Young Persons of 1996 to ensure that no child under 14 years of age is permitted to work, including children who work in agricultural and stock-raising undertakings which do not permanently employ more than ten workers and those who work on their own account. It once again requests the Government to provide information on any progress achieved in this respect.*

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that, although the net school enrolment rate at the primary level was relatively high, the net school attendance rate at secondary level remained low. The Committee also noted that a preliminary draft of the General Education Act, which is to replace the Consolidated Act of 1966, had been submitted to the Directorate of Education. The new legislation would, among other provisions, establish that school is compulsory and free of charge for ten years, namely one year of pre-school and nine years of primary education. The Committee also noted that education is one of the components of the implementation of the National Plan of Action for the Elimination of Child Labour 2008–15.

The Committee notes that the Government's report again does not provide any information on progress in relation to the envisaged reform of the Consolidated Act of 1966. Neither does the Government report contain any information on the efforts undertaken by the Government to improve the operation of the education system with a view to increasing school attendance rates among children under 14 years of age in compulsory basic education, in the context of the National Plan of Action for the Elimination of Child Labour (2008–15).

Notwithstanding the absence of information on this point, the Committee observes that, according to UNICEF statistics for 2010, the net school attendance rate for primary education has improved and stands at 90 per cent for girls and 87 per cent for boys (compared to 80 per cent and 76 per cent respectively in 2009). The net school attendance rate for secondary education remains low with only 43 per cent of girls and 35 per cent of boys attending this level of education (compared to 36 per cent and 29 per cent respectively in 2009).

*Considering that compulsory education is one of the most effective means of combating child labour, the Committee once again firmly requests the Government to intensify its efforts to improve the functioning of the education system with a view to increasing school attendance completion rates for secondary education among children under 14 years of age in compulsory basic education. It requests the Government to provide information on the measures adopted in this respect, particularly in the context of the National Plan of Action for the Elimination of Child Labour and the Roadmap for the Eradication of Child Labour. The Committee also once again expresses the firm hope that the preliminary draft General Education Act will be adopted in the near future and that it will contain provisions guaranteeing compulsory schooling up to the age of 14. It requests the Government to provide a copy of the Act once it has been adopted.*

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Articles 3(a)–(b) and 7(1) of the Convention. Sale and trafficking of children for commercial sexual exploitation, use of children for prostitution and for the production of pornography or pornographic performances, and penalties applied.* In its previous comments, the Committee noted information on the denunciations received by the Office of the Public Prosecutor concerning the economic exploitation of minors, child pornography and the procuring and trafficking of persons, the number of crimes reported relating to the commercial sexual exploitation of minors and the number of prosecutions initiated concerning the trafficking of persons and the commercial sexual exploitation of children. While noting that the national legislation, in particular Decree No. 234-2005 of 28 September 2005 amending the Penal Code, prohibits the trafficking of children for commercial sexual exploitation and the use of children for prostitution and for the production of pornography and for pornographic performances, the Committee expressed concern at the allegations of corruption and complicity between those engaged in trafficking and law enforcement, and at the fact that no investigations had been conducted of these cases. In this regard, it urged the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions were carried out against the perpetrators and requested it to provide detailed information on the number of investigations conducted, prosecutions and convictions applied.

Although the Government indicates that special units were created within the Police and Public Ministry for the prosecution of cases of trafficking and commercial sexual exploitation and that various convictions against trafficking in persons were handed down, the Committee notes with *regret* that the Government's report contains no information on the number of prosecutions, convictions or sanctions imposed for the sale and trafficking of persons under 18 years of age for the purposes of commercial sexual exploitation or for the use of persons under 18 years of age for prostitution, the production of pornography or for pornographic performances, as well as for officials who are accomplices in such crimes.

The Committee also notes that the Special Rapporteur on the sale of children, child prostitution and child pornography visited the country in September 2012 and called on the Government to increase its efforts to protect children from sexual exploitation, adding that the country still faces many challenges to ensure that children are not victims of prostitution, pornography and abuse. According to the Special Rapporteur these challenges consist of difficulties in accessing mechanisms to guarantee rapid protection and security of children, lack of coordination among government mechanisms, limited resources and slow judicial investigations and impunity denying protection to victims and witnesses (UN News Wire, 10 September 2012).

The Committee notes with *interest* the Law against Trafficking in Persons, which was adopted by the National Congress on 30 May 2012 through Legislative Decree No. 59-2012. Section 6 of the Law prohibits all forms of trafficking, and also includes the prohibition of commercial sexual exploitation and the use of children below 18 years of age in illegal activities. The Law mandates the establishment of the Inter-Institutional Commission on Sexual Exploitation and Trafficking in Persons, which is to promote inter-agency cooperation and the coordination of activities for the prevention, protection and eradication of these crimes. For this purpose, the Law establishes a range of measures for the protection of victims, to ensure compensation and to provide rehabilitation services. The Committee notes that as a general principle the Law sets out the best interests of the child (section 3) and special attention is paid to child victims of trafficking (section 25). Section 52 prescribes penalties from ten to 15 years of imprisonment and fines between 150 and 250 daily wages for the crimes enumerated in section 6 of the Law and establishes that these penalties are increased by 50 per cent in case the victim is a child below 18 years of age.

***The Committee urges the Government to take the necessary measures to ensure the immediate and effective implementation in practice of the 2012 Law against Trafficking in Persons. In this regard, the Committee again urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions are carried out against persons engaged in the sale and trafficking of persons under 18 years of age for the purposes of commercial sexual exploitation or who use persons under 18 years of age for prostitution, the production of pornography or for pornographic performances, as well as against officials who are accomplices in such acts, and that sufficiently effective and dissuasive sanctions are applied in practice. It reiterates its request to the Government to provide detailed information on the number of investigations conducted, prosecutions and convictions applied.***

*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. Commercial sexual exploitation and trafficking for that purpose.* In its previous comments, the Committee noted the National Plan of Action to Combat Commercial Sexual Exploitation (2006–11), which envisages the establishment of procedures for the identification, referral and provision of assistance to children and young persons who are victims of trafficking, as well as the development of models, programmes and projects for comprehensive assistance to children and young persons who are victims of commercial sexual exploitation. The Committee also noted the activities under the ILO–IPEC subregional project on the commercial sexual exploitation of children which were completed in April 2009 and the development of a Protocol in 2008 for comprehensive assistance to children and young persons who are victims of commercial sexual exploitation. The Committee requested the Government to pursue its efforts and requested it to provide detailed information on the measures adopted and results achieved in the context of the 2008 Protocol and the National Plan of Action (2006–11).

The Committee notes the Government's information that the National Plan of Action to Combat Commercial Sexual Exploitation (2006–11) was elaborated and is being implemented in all relevant institutions. Other measures have included: the implementation of a pilot project on the social rehabilitation of victims of commercial sexual exploitation in the South of the country in June 2011; the effective coordination with different non-governmental organizations to ensure adequate assistance to victims; awareness-raising and capacity-building activities for a large number of justice and civil society workers and various awareness-raising and communication activities. Yet the Committee notes that the Government's report contains no information on the results achieved in terms of the number of children who have, in practice, been removed from trafficking and commercial sexual exploitation, and who have benefited from social integration measures.

***Noting that the abovementioned 2012 Law against Trafficking in Persons also contains comprehensive provisions on the protection, assistance and social reintegration measures to be provided to victims of trafficking and commercial sexual exploitation, the Committee strongly encourages the Government to take immediate and effective measures to implement in practice, measures to provide comprehensive assistance to children and young persons who have been victims of commercial sexual exploitation and trafficking for that purpose. In this regard, the Committee hopes that the Government will have the capacity to provide detailed information with its next report on the results achieved, including an indication of the number of children who have, in practice, been removed from trafficking and commercial sexual exploitation, and who have benefited from social integration measures.***

*Clause (d). Children at special risk. 1. Street children.* The Committee previously noted the high number of street children and the results of the *Mano Amiga* project targeting young persons living in the crematoria of Tegucigalpa and San Pedro Sula. It requested the Government to continue its efforts to protect street children from the worst forms of child labour and to provide information on the results achieved, particularly within the framework of the *Mano Amiga* project.

The Committee notes that the Government's report contains no information on the number of children removed from the streets and who benefited from rehabilitation and social integration measures. The Committee notes from a press release posted on the website of the Organization of Ibero-American States (OEI) of 27 February 2012, and based on the information provided by the Government that the objective of the *Mano Amiga* project is to capacitate directly 550 and indirectly 2,750 beneficiaries in the main cities of the country. The press release informs that as a result of the project, 241 waste scavengers were removed from the crematorium of the city of San Pedro Sula.

*While noting this information, the Committee encourages the Government to continue its efforts to protect street children from the worst forms of child labour and it requests the Government to continue to provide information on the number of children removed from the streets and who have benefited from rehabilitation and social integration measures, in particular through the “Mano Amiga” project.*

2. *Indigenous children.* In its previous comments, the Committee noted the policy and programmatic measures taken to prevent and remove indigenous girls, boys and young persons from child labour, including in the framework of the ILO–IPEC activities in the country. The Committee requested the Government to intensify its efforts to protect indigenous children that are at risk of being engaged in the worst forms of child labour, and requested it to provide information on the results achieved.

While noting the information concerning the consultation of indigenous groups in the framework of the design and implementation of the Public Policy and National Action Plan on Justice and Human Rights, the Committee notes that the Government’s report contains no information on measures and results achieved to protect indigenous children from the worst forms of child labour. The Committee takes due note of the information contained in the 2012 report on child labour prepared by the Secretary of State in the Offices of Justice and Human Rights, which reports about a direct assistance programme allowed for the withdrawal of 150 children and the prevention of 350 children from child labour in the indigenous community of Opatoro.

*Recalling that the children of indigenous peoples are often victims of exploitation, which takes on very diverse forms, and are a population at risk of being engaged in the worst forms of child labour, the Committee reiterates its request to the Government to intensify its efforts to protect these children from the worst forms of child labour and to provide information on the results achieved in its next report.*

*Clause (e). Special situation of girls. Child domestic workers.* The Committee previously noted that a large number of children, particularly girls, are engaged in domestic work. It emphasized that children engaged in domestic work, particularly young girls, are often victims of exploitation, which takes on very diverse forms, and that it is difficult to supervise their conditions of employment. The Committee, therefore, requested the Government to take effective measures in that respect.

*Noting with regret the absence of information on this point in the Government’s report, the Committee is bound to reiterate its request to the Government to take immediate and effective measures for the protection of children engaged in domestic work against the worst forms of child labour, taking into account the special situation of girls. It again requests the Government to provide information in its next report on the measures adopted and the results achieved in this respect, with an indication of the number of child domestic workers who have, in practice, been removed from the worst forms of child labour and the specific rehabilitation and social integration measures adopted for these children.*

*Article 8. International and regional cooperation. Commercial sexual exploitation and trafficking for that purpose.* In its previous comments, the Committee noted that the ILO–IPEC subregional project on the commercial sexual exploitation of children envisaged the strengthening of horizontal collaboration between countries participating in the project. It considered that cooperation between law enforcement agencies, particularly the judicial authorities and police forces, is indispensable to prevent and eliminate commercial sexual exploitation, and particularly the sale and trafficking of children for that purpose, through the collection and exchange of information and through assistance in the detection and prosecution of the individuals involved, and the repatriation of victims. The Committee requested the Government to provide information on the measures adopted to promote cooperation with neighbouring countries in this regard and indications as to the number of children repatriated to their countries of origin.

The Committee notes that besides the statement that the Government has exchanged experiences with other countries on trafficking and the commercial sexual exploitation of children in Colombia in December 2010, the Government’s report provides no information on this point. The Committee notes that section 43 of the abovementioned 2012 Law against Trafficking in Persons provides for the repatriation of foreign victims of trafficking abroad or of nationals to Honduras, which should be voluntary and assisted.

*In these circumstances, the Committee once again requests the Government to provide information on the measures adopted to promote cooperation with neighbouring countries and strengthen security measures at common borders with a view to combating the trafficking and commercial sexual exploitation of children. It also requests the Government to provide detailed information on the implementation of the 2012 Law against Trafficking in Persons, with an indication of the number of children repatriated to their countries of origin.*

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

## Indonesia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention and Part V of the report form. National policy and the application of the Convention in practice.* The Committee previously noted the information in the Indonesia Child Labour Survey (2009) that there were 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). Most were employed in agriculture, including forestry, hunting and fishery (57 per cent of all working children aged 5–17). The Survey further indicated 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 requested information on measures taken to ensure that children under the minimum age were not engaged in child labour.

The Committee notes the Government's indication that it has undertaken activities to prevent children under the age of 15 from engaging in child labour, such as the Child Social Welfare Programme, implemented by the Ministry of Social Affairs, which included providing capital assistance to parents of children at risk and measures to encourage children to return to school. The Government also provides tuition assistance to children who were withdrawn through the Reduction of Child Labour Programme, through the Directorate of Special Education and Services within the Ministry of Education. The Committee further notes the information from ILO–IPEC of September 2011 that the Mid-Term National Development Plan (2010–14) includes strategies and policies to address child labour. Moreover, since 2008, the Government has been implementing a conditional cash transfers programme to improve educational access for children from poor families, with the reduction of child labour as a key indicator of the programme. By the end of 2011, the programme was expected to cover approximately 1.1 million households. ***While taking due note of the measures taken by the Government, the Committee observes that there remain a significant number of children engaged in child labour in the country and therefore urges the Government to pursue its efforts to ensure that, in practice, children under the minimum age of 15 are not engaged in economic activities. It requests the Government to continue to provide information on the measures taken in this regard, and on the results achieved. It also requests the Government to provide information on the manner in which the Convention is applied in practice, including information from on the labour inspectorate on the number and nature of contravention reported, violations detected and penalties applied.***

*Article 2(1). Scope of application.* 1. *Informal economy.* The Committee previously noted the indication of the International Trade Union Confederation (ITUC) that child labour was widespread in Indonesia, taking place mostly 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) excluded from its application children who are engaged in self-employment or working without a clear wage relationship. It further noted the information from the Indonesia Child Labour Survey Report 2009, that out of all working children between the ages of 5–12, 12.7 per cent were self-employed, and 82.5 per cent were unpaid family workers. The Survey further indicated 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. However, the Committee 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 and was under discussion in the Ministry of Manpower.

The Committee notes the Government's statement that it is maintaining coordination with the relevant stakeholders in order to finalize the draft Act on the protection of children who work outside of an employment relationship. The Government indicates that, to date, the definition of children working outside of an employment relationship is still to be formulated. The Committee must therefore once again express its *concern* that the vast majority of children working under the minimum age do not benefit from the protection of the Manpower Act. ***The Committee therefore urges the Government to take the necessary measures to ensure the finalization and adoption of the Act on the protection of children who work outside of an employment relationship in the very near future. It requests the Government to provide a copy of this Act, once adopted.***

2. *Domestic work.* The Committee previously noted the ITUC's allegation in its communication that young domestic workers 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 and 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 information in a report entitled “Recognizing domestic work as work”, published by the ILO Country Office in Jakarta in April 2010 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. This report further indicated 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. However, the Committee noted the Government's indication that a draft Act for the protection of domestic workers had been formulated and would be discussed in the Indonesian House of Representatives. The Committee further noted the Government's indication that it had increased its efforts to prevent children under 15 from working as domestic workers, including through the creation of guidelines and collaboration with local governments to prevent children under 15 from engaging in domestic work and

through specialized inspections. The Committee expressed its deep concern at the number and situation of children working as domestic workers, and urged the Government to take measures to ensure the adoption of the draft Act for the protection of domestic workers.

The Committee notes the Government's statement that the draft Act on the Protection of Domestic Workers has been included in the Register of the National Legislation Programme for 2010–14. The Government indicates that it continues to encourage discussion on this draft Act. The Committee also notes the Government's indication concerning its work with the ILO–IPEC and the NGO Save the Children, to withdraw child labourers, particularly in the domestic sector. The Government also indicates that the Ministry of Home Affairs will conduct activities under a pilot project entitled “Stop Child Domestic Work” in four provinces, and has provided rehabilitation services to child domestic workers through the Temporary House Shelter for Children. Moreover, the Ministry of Education has established several child-friendly pilot schools for former child labourers, including child domestic workers. **Recalling that the Government first referred to the draft Act on the Protection of Domestic Workers in 2008, the Committee urges the Government to take the necessary measures to ensure that this Act is adopted in the near future, and to provide a copy of this legislation once adopted. Taking note of the measures taken by the Government to prevent children under 15 from engaging in domestic work, the Committee urges the Government to pursue and strengthen these efforts, and to provide information on the impact achieved.**

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)**

*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 sexual, physical or psychological abuse. The Committee also noted the information from the 2010 report entitled *Recognizing domestic work as work*, published by the ILO country office in Jakarta that approximately 35 per cent of domestic workers are under the age of 18. This report also indicated that 81 per cent of domestic workers work 11 hours or more a day, and that being hidden from public scrutiny made these workers particularly vulnerable to exploitation and abuse. This report further indicated 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. However, the Committee noted the Government's statement that a draft Act on domestic workers' protection had been formulated, and would be discussed in the Indonesian House of Representatives. The Government further indicated that it was making serious efforts to provide physical, psychological, economic and legal protection to domestic workers, including through the creation of guidelines and the provision of training to prevent children from entering domestic work.

The Committee notes the Government's indication that it has continued to take measures, in cooperation with non-governmental organizations, to protect domestic workers through activities such as mentoring, training, data collection and the dissemination of information, and that national and local governments have conducted trainings on the subject. The Government indicates that it has made efforts to prevent children from becoming domestic workers, including measures taken by the Ministry of Social Affairs to reduce the vulnerability of children, and the Child Social Welfare Programme, which aims to protect children against all forms of exploitation and abuse (including the prevention of child domestic labour). The Committee also notes the Government's statement that the draft Act on the protection of domestic workers has been included in the Register of the National Legislation Programme for 2010–14. The Committee further notes the Government's indication that sanctions may be imposed on persons who employ children under 18 in hazardous household work under the provisions in the Manpower Act prohibiting the employment of children in hazardous work as well as under the Child Protection Act which provides for the special protection of children against economic exploitation. However, the Committee notes the information from a document from ILO–IPEC concerning the Project of Support to the Indonesian Time-bound Programme on the elimination of the worst forms of child labour of September 2011 that the current legislation on child labour is not effective in tackling the problem of child domestic workers. **Therefore, the Committee 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, to ensure the protection of children under 18 from hazardous domestic work. It requests the Government to continue to take concrete 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 work. The Committee encourages the Government to ratify the Domestic Workers Convention, 2011 (No. 189), which has key provisions for child protection.**

*Article 5. Monitoring mechanisms. Police and immigration officers.* The Committee previously noted the Government's indication that efforts had 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. It also noted the information from the International Organization for Migration that there was a great need to sensitize criminal justice agencies across Indonesia with regard to the content of the Anti-Trafficking in Persons Act of 2007. It noted that many police and prosecutors remained unfamiliar with the anti-trafficking legislation, and were reluctant or unsure of how to effectively use this legislation to punish traffickers, and that corruption continued to hinder anti-trafficking efforts.

The Committee notes the Government's statement that the Anti-Trafficking in Persons Act has been consistently applied to persons involved in trafficking. The Government indicates that the police handled cases of trafficking involving 146 adults and 68 children in 2011. The Government indicates that 164 trafficking offenders were identified, and 91 of the cases were successfully prosecuted. The Committee also notes the information in the Government's report to the Committee on the Rights of the Child that it will take measures to strengthen the Task Force for Combating Trafficking in Persons at the national, provincial, and regency/district levels, especially in areas of origin, transit and destination (CRC/C/IDN/3-4, paragraph 93). In this regard, the Committee notes the information from ILO-IPEC of September 2011, that 18 provinces had established a task force to optimize the handling of the trafficking cases. However, the Committee notes the Government's statement in its report to the Human Rights Committee (HRC) for the Universal Periodic Review (UPR) of 7 March 2012 that, in 2010, 28,289 Indonesian citizens were indicated to have been victims of trafficking in persons (A/HRC/WG.6/13/IDN/1, paragraph 117). ***The Committee, therefore, urges the Government to pursue its efforts to combat trafficking in children by ensuring that perpetrators of human trafficking are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to continue 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 Government had developed a National Plan of Action on the Eradication of Trafficking in Persons and Sexual Exploitation of Children 2009–14 (NPA on Trafficking and SEC). It also noted that, in collaboration with ILO-IPEC, several initiatives had been undertaken to provide rehabilitation and reintegration services to child victims of trafficking. Nonetheless, the Committee noted information indicating that efforts to protect victims of trafficking remained uneven and inadequate in comparison with the scope of the country's trafficking problem. The Committee requested information on the concrete steps taken in this regard.

The Committee notes the Government's indication that the NPA on Trafficking and SEC 2009–14 was adopted by virtue of Regulation of the Coordinating Minister for People's Welfare No. 25/KEP/MENKO/ KESRA/IX/2009. The Government also indicates that the Child Social Welfare Programme aims to protect children from trafficking, and that implementing partners have been provided with grants for trained social workers and to support the reintegration of children. Moreover, the Government indicates that it is providing services for child victims of trafficking through the child social protection shelters, located in Jakarta and 27 other areas of Indonesia. In this regard, the Committee notes the Government's statement in its report to the HRC for the UPR of 7 March 2012 that 234 child victims of trafficking were treated at child social protection shelters in 2010 (A/HRC/WG.6/13/IDN/1, paragraph 120). ***The Committee requests the Government to continue to take measures, within the framework of the NPA on Trafficking and SEC 2009–14, to prevent the trafficking of children under 18 years of age, and provide for their removal and subsequent rehabilitation. The Committee requests the Government to continue to provide information on 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 information from UNICEF 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. It noted that child-sex tourism is prevalent in urban areas and tourist destinations.

The Committee notes the Government's statement that, through the NPA on Trafficking and SEC 2009–14, it has taken measures to eliminate the commercial sexual exploitation of children in the tourism sector through the development of child-friendly tourism sites. Regarding Regulation No. PM.30/HK.201/MKP/2010 on Guidelines on the Prevention of Sexual Exploitation of Children in Tourism, the Government indicates that it continues to disseminate prevention material on child sexual exploitation in the tourism sector, in cooperation with both private and public tourism stakeholders. ***Noting that there remain a significant number of child victims of commercial sexual exploitation, including in child-sex tourism, the Committee 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 measures taken, including through the NPA on Trafficking and SEC 2009–14.***

*2. Children engaged in the sale, production and trafficking of drugs.* In its previous comments, the Committee noted that approximately 15,000 children were involved in the sale, production and trafficking of drugs in Jakarta in 2003. It 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 be involved in the drug trade. However, the Committee noted 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, and that, through cooperation with ILO-IPEC, many children had been removed from work involving drugs. Nonetheless, the Committee noted information from the Government that there had 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, therefore, expressed its concern at the lack of progress in prosecuting perpetrators of this worst form of child labour.



The Committee notes the Government's statement that the Ministry of Manpower and Transmigration is currently coordinating with the national police and the National Narcotics Agency concerning information on the involvement of children in the sale of drugs. The Government also refers to the Act on Child Protection of 2002, section 89 of which provides penalties for persons who involve children in the production, sale and trafficking of drugs. However, the Committee notes an absence of information in the Government's report on the application of these provisions in practice. ***The Committee, therefore, requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons who involve children in the production, sale or trafficking of illicit drugs are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It requests the Government to provide information on the measures taken, particularly 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 to prevent and remove children from being engaged in this hazardous form of work. The Government also indicated that the North Sumatra government had made efforts to monitor this sector and disseminated information about the dangers of working on fishing platforms. However, the Committee noted information of the report on the National Action Plan on the Worst Forms of Child Labour stages I and II (submitted with the Government's report) that offshore fishing platforms was an area where investigations and prosecutions for persons who employ children needed to be more effective. This report indicated that many cases of violations were closed just after the investigations and never brought to court because of the inadequate capacity of law enforcers.

The Committee notes the Government's statement that it has engaged in various efforts to prevent the engagement of children in work on fishing platforms, including raising community awareness, cooperation with regional governments and collaboration with NGOs. The Government indicates that increased public awareness through education, aimed at preventing the engagement of children on fishing platforms, has been successful, with some fishing platforms no longer engaging children. The Government also indicates that in districts containing fishing platforms, action committees have been established under the action plan for the elimination of the worst forms of child labour, which are in charge of coordinating the elimination of hazardous child labour on these platforms. The Committee further notes the Government's indication that, to date, data on prosecutions and sanctions for those who employ children on fishing platforms is not available, and that its efforts have focused on preventative education efforts. While noting the measures taken by the Government, the Committee once again 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 requests 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 measures taken in this regard in its next report.***

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

## Ireland

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that the Child Trafficking and Pornography Act 1998 defined a child as a person under 17 years of age. In response to the request to indicate the measures taken or envisaged to prohibit the sale and trafficking of children under 18 years of age for the purposes of sexual or labour exploitation, and to prevent the use, procuring or offering of a child under 18 for the production of pornography or for pornographic performances, the Government provided information on the Criminal Law (Trafficking in Persons and Sexual Offences) Bill of 2006, which defined a "child" as a person under 18 years of age and contained provisions punishing the trafficking of persons, including children; the sale of children for purposes of sexual exploitation; and other offences related to the sexual exploitation of children.

The Committee notes with **satisfaction** the adoption of the Criminal Law (Human Trafficking) Act 2008, section 1 of which defines a "child" as a person under 18 years of age. The Committee notes the comprehensive provisions in the abovementioned Act prohibiting the sale and trafficking of children for the purposes of sexual (section 3) and labour exploitation (section 2). The Committee further notes the broad definition of sexual exploitation in relation to a child contained in section 3; which includes inter alia the inviting, inducing or coercing of a child to engage in prostitution or the production of child pornography and the prostitution or use of a child for the production of child pornography. By virtue of the Act, a person who traffics a child for labour (section 2(1)) or sexual exploitation (section 3 (a)(1)); sells a child, offers or exposes a child for sale or invites the making of an offer to purchase a child, or purchases or makes an offer to purchase a child (section 2(2)); sexually exploits a child or takes, detains or restricts the personal liberty of a child for the purpose of his or her sexual exploitation (section 3(a)(2)), is to be punished with imprisonment for life or a lesser

term and to a fine. The Committee, moreover, duly notes that section 7 of the Law provides for a broad jurisdiction for the Irish courts enabling the prosecution of an offence committed on Irish territory, by an Irish person or person ordinarily resident in Ireland for an offence committed abroad and the prosecution of an offence committed abroad against an Irish person or person ordinarily resident in Ireland.

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee previously noted that the Child Care Act protects children from the use of drugs but not from being used, procured or offered for the trafficking of drugs. The Committee notes that the Child Care (Amendment) Act of 2007 contains no provisions prohibiting the use, procuring or offering of a child for the production and trafficking of drugs. ***The Committee once again requests the Government to indicate whether legal provisions exist prohibiting the use, procuring or offering of a child for illicit activities, including the production and trafficking of drugs. If not, it requests 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.

## Jamaica

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2003)**

*Article 3(2) of the Convention. Determination of hazardous work.* The Committee previously noted that a draft list of types of hazardous employment or work prohibited for persons below 18 years of age had been developed in consultation with the social partners. The Committee noted that this draft list contained 45 types of prohibited work.

The Committee notes the information in the Government's report that stakeholder consultations on the hazardous work list were undertaken within the framework of the Tackling Child Labour through Education (TACKLE) Project. The Committee also notes the Government's statement in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the list of hazardous work will be included in the regulations of the new Occupational Safety and Health Act (OSH Act), when adopted. ***Noting that the Government has been compiling this list since 2006, the Committee urges the Government to take the necessary measures to ensure that the list of types of hazardous work prohibited for persons under 18 years of age is adopted in the near future. It requests the Government to provide a final copy of the list, once adopted.***

*Article 7(3). Determination of light work.* The Committee previously noted that section 34(1) and (2) of the Child Care and Protection Act permits the employment of a child between 13 and 15 years in an occupation included in a list of prescribed occupations, consisting of light work considered appropriate by the minister, and specifying the number of hours during which and the conditions under which such a child may be so employed. In this regard, the Government indicated that a draft list of occupations constituting light work was being examined by a panel consisting of safety inspectors, workers' and employers' representatives and would be included in the regulations for the new OSH Act. This draft list of light work permitted for children included household chores, hair-braiding, work as a supermarket packer, clerical work and newspaper vending.

The Committee notes the Government's statement that the draft List of Light Work Permitted for Children was recently reviewed, for inclusion in the new OSH Act. The Government indicates that the draft OSH Act was recently reviewed in preparation for its submission to Parliament for debate. ***The Committee once again requests the Government to take the necessary measures to ensure that the OSH Act, and its regulations containing the List of Light Work Permitted for Children, are adopted in the near future.***

*Article 9(1) and part III of the report form. Penalties and the labour inspectorate.* The Committee previously noted that labour inspections are confined to the formal sector, and that labour inspectors have yet to detect any cases of child labour in the course of inspections. In this regard, the Committee noted the information from ILO-IPEC that the informal sector was one of the main sectors in which child labour occurs. However, the Committee noted the Government's indication that the draft OSH Act would replace the Factories Act and provide an improved framework for labour inspectors with regard to monitoring cases of child labour in sectors where they hitherto had limited powers, including the informal sector. The Government also indicated that the penalties under the draft OSH Act had been reviewed and that fines ranging from 250,000 Jamaican dollars (JMD) to JMD1,000,000 could be imposed under this Act, and a person could also be imprisoned for a period not exceeding three months if in default of such a fine.

The Committee notes the Government's indication that the new OSH Act will authorize labour inspectors to enforce the appropriate sanctions where a breach has been committed. The Committee also notes the Government's statement that, within the framework of the TACKLE Project, measures have been taken to sensitize the labour inspectorate on child labour issues, through local workshops and training at the International Training Centre of the ILO. However, the Committee notes the information in the document entitled "Child Labour Legislative Gap Analysis" of March 2012, submitted with the Government's report under Convention No. 182, that labour officers' powers of inspection are limited to commercial buildings and factories, which greatly restricts their capacity to monitor informal sectors of the economy for child labour practices. This report also indicates that while the reporting of cases of child labour has increased, arrests and prosecutions for the child labour offences have not necessarily resulted. ***Recalling 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 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, the Committee requests the Government to pursue its efforts to ensure the adoption of the provisions of the draft OSH Act which will enable labour inspectors to enforce appropriate sanctions. It further requests the Government to redouble its efforts to strengthen the capacity and expand the reach of the labour inspectorate, including the allocation of additional resources, in preparation for the labour inspectorate's expanded role, pursuant to the draft OSH Act, in monitoring the informal economy.*

*Article 9(3). Registers of employment.* The Committee previously noted that the available texts of legislation did not contain provisions requiring an employer to keep registers and documents of persons employed or working under him/her. However, it noted the Government's statement that the legal framework on this issue was being examined by the Ministry.

Noting an absence of information on this point in the Government's report, the Committee reminds the Government that legislative provisions shall prescribe the registers which shall be kept and made available by the employer and which must 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 less than 18 years of age, in conformity with *Article 9(3)* of the Convention. ***The Committee once again requests the Government to take the necessary measures in the near future to ensure the adoption of provisions prescribing registers to be kept by employers, in conformity with Article 9(3) of the Convention.***

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted the information from UNICEF that 7 per cent of boys and 5 per cent of girls between the ages of 5 and 14 years worked in the years 1999–2006. The Committee noted the information from ILO–IPEC that the main areas of work for children are in agriculture, fishing and the informal sector (including selling goods and services and domestic work). The Committee also noted that the TACKLE Project was launched in Jamaica in 2009. It further noted the information from ILO–IPEC that reliable data and statistics on the number of child labourers in Jamaica was scarce.

The Committee notes the Government's statement that through the TACKLE Project, and in collaboration with non-governmental organizations, direct support has been provided to over 500 children, in the form of remedial education, skills training, awareness-raising, and help for children and their families in accessing social support mechanisms. The Government also indicates that the Ministry of Labour and Social Security has developed a Child Labour Policy, and that a Child Labour Handbook for Professionals has been developed. The Government further indicates that the social partners have taken measures to address child labour, such as the establishment of a Child Labour Steering Committee and the adoption of a child labour policy by the Jamaica Confederation of Trade Unions, and the development of a draft child labour policy by the Jamaica Employers Federation.

The Committee further notes the Government's statement, in its report submitted under Convention No. 182, that it is expected that a Child Labour Survey will be conducted to assist in assessing the impact of the various initiatives taken. In addition, the Committee notes the information in the document entitled "Child Labour Legislative Gap Analysis" of March 2012, that a Children's Registry has been established to receive, review and refer reports made under the Child Care and Protection Act. This report indicates that in 2008, the Office of the Children's Registry received 17 reports related to child labour, 22 such reports in 2009, 52 reports in 2010 and 38 reports between January and July 2011. ***The Committee requests the Government to pursue its efforts to combat child labour, and to continue to provide information on the measures taken in this regard. The Committee also requests the Government to continue its efforts to undertake a child labour survey, to ensure that sufficient up-to-date data on the situation of working children in Jamaica is available, including, for example, data on the number of children and young persons who are engaged in economic activities and statistics relating to the nature, scope and trends of their work.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously noted the adoption of the Sexual Offences Act, which addresses sexual offences against children. The Committee observed that the Sexual Offences Act prohibits procuring any person to become a prostitute (section 18 (1)(b)), and prohibits living off the proceeds of prostitution (section 23(1)(a)). However, the Committee observed that the Sexual Offences Act did not appear to prohibit the *use* of a person under the age of 18 for the purpose of prostitution.

The Committee notes the Government's statement that it is an offence to procure any person for the purpose of prostitution. The Committee also notes the Government's indication that there are two bills currently being debated by Parliament relating to sexual offences, although the Committee observes that these bills do not appear to relate to the prostitution of children, and particularly the *use* of children under 18 years for prostitution, i.e. by a client. ***Accordingly, the Committee once again requests the Government to provide information on whether there are any legislative provisions which prohibit particularly 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.* The Committee previously 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 also noted that, in practice, children were used in Jamaica as drug couriers and for selling drugs. However, the Committee noted that the draft list of hazardous work prohibited for children did prohibit 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 notes the Government's indication that the draft of the list of hazardous work prohibited for children has not yet been adopted. However, the Government indicates that one of the reported cases of human trafficking concerned the use of a child in drug-related activities. The Committee also notes the information from the International Trade Union Confederation in a report entitled "Internationally Recognized Core Labour Standards in Jamaica" of January 2011 that in the country, boys are used as drug couriers and dealers. ***The Committee, therefore, once again 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. The Committee also requests the Government to take measures to ensure that this offence is punishable with sufficiently effective and dissuasive penalties.***

*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 contained in the new Occupational Safety and Health Act (OSH Act) or its regulations. The Committee noted that the draft hazardous work list contained 45 types of prohibited work.

The Committee notes the Government's indication that the list of hazardous work will be included in the regulations of the new OSH Act, when adopted. The Government indicates that the OSH Act has been reviewed and placed on the Ministry of Labour and Social Security's legislative agenda for 2012–13. Observing that the Government has been developing this list since 2006, the Committee 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, once again urges the Government to take the necessary measures, as a matter of urgency, to ensure that the OSH Act, and the regulations containing the list of types of hazardous work prohibited for children, is 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) and Part V of the report form. Monitoring mechanisms, penalties and the application of the Convention in practice. Trafficking of children and child prostitution.* The Committee previously noted that trafficking of children (particularly for the purpose of forced prostitution) and commercial sexual exploitation of children (especially in tourist areas) are a problem in Jamaica. The Committee also noted that more vigorous investigations of trafficking offences was necessary. In this regard, the Government indicated that the Child Labour Unit collaborated with the Trafficking in Persons Unit in the Jamaica Constabulary Force. However, the Government also indicated that an assessment on the enforcement machinery to combat child labour in Jamaica indicated that much more needed to be done on the ground to facilitate greater cooperation between agencies.

The Committee notes the Government's statement that a Plan of Action to Combat Trafficking in Persons was developed in May 2012, which is to be endorsed by the Cabinet. The Committee also notes the information in the Government's report submitted under the Forced Labour Convention, 1930 (No. 29), that the National Task Force Against Trafficking in Persons is responsible for the implementation of the Plan of Action, and that this plan includes an emphasis on the suppression of trafficking in persons and prosecution policies for offenders. The Committee further notes the Government's indication that the Trafficking in Persons Act 2009 is to be reviewed to allow for stiffer penalties for offenders, mandatory reporting responsibilities to bring known or suspected cases to the relevant authorities and sentencing guidelines.

The Committee notes the information in the report of the Office of the Children's Registry, submitted with the Government's report, that between 2007 and the first seven months of 2011, this Office had received eight reports concerning the trafficking of children for the purpose of sexual exploitation and 23 reports of the trafficking of children for the purpose of labour exploitation. The Government states that, despite increases in reports related to child labour and child trafficking, this is not reflected in the number of cases brought before courts. In this regard, the Committee notes the Government's statement in its report submitted under Convention No. 29 that since 2007, eight suspected cases of human trafficking have been investigated, but police have encountered problems pursuing investigations. The Committee, therefore, observes that the number of reported cases of child trafficking appears to be significantly higher than the total number of cases of trafficking that were investigated. Moreover, the Committee notes that the Human Rights Committee, in its concluding observations of 17 November 2011, expressed concern at the prevalence of trafficking in persons for sexual exploitation and forced labour, particularly with regard to the low level of investigations, prosecutions and convictions in this area (CCPR/C/JAM/CO/3, paragraph 22). ***The Committee, therefore, urges the Government to take immediate and effective measures to ensure, in practice, the protection of children from trafficking and commercial sexual exploitation. It requests the Government to ensure that thorough investigations and robust prosecutions of perpetrators of the trafficking or commercial sexual exploitation of children are carried out and that sufficiently***

*effective and dissuasive sanctions are imposed in practice. It asks the Government to provide information on the measures taken in this respect, including through the Plan of Action to Combat Trafficking in Persons, 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.* The Committee previously noted that child trafficking and commercial sexual exploitation were present in Jamaica. It observed that the Government was taking some measures to provide assistance to child victims of these worst forms of child labour and, in this regard, noted that a shelter for trafficking victims would soon become operational.

The Committee notes the Government's statement that efforts are still being made to have the government shelters become operational, but that this will be included in the new Plan of Action to Combat Trafficking in Persons 2012–15. The Committee also notes the Government's indication that the Trafficking in Persons Act 2009 is to be reviewed to allow for, among others, restitution for victims. The Government further indicates that the Ministry of Justice is launching a Children in Court Programme, which will train staff to address the unique needs of children as they go through the court process, including counselling. Nonetheless, the Committee notes that the Human Rights Committee, in its concluding observations of 17 November 2011, expressed concern at the lack of protection mechanisms for victims of trafficking, including rehabilitation schemes (CCPR/C/JAM/CO/3, paragraph 28). ***The Committee, therefore, requests the Government to take effective and time-bound measures to ensure the provision of appropriate services, including legal, psychological and medical services, to child victims of trafficking and commercial sexual exploitation, including child sex tourism, to facilitate their rehabilitation and social reintegration. It requests the Government to continue to provide information on measures taken in this regard, including the number of children reached through these initiatives.***

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

## Jordan

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. 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, including those under 18, but does not do so in respect of boys under the age of 18.

The Committee once again 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. The Committee also notes the Government's reference to the Human Trafficking Act of 2009. The Committee notes that section 3(a) of the Human Trafficking Act prohibits leading, transferring, sheltering or receiving any person under the age of 18 years of age for their exploitation, even if that exploitation is not accompanied by the threat of force, or its use, deception, misuse of power or the exploitation of a state of weakness. Section 3(b) specifies that exploitation includes prostitution or any form of sexual exploitation.

Referring to paragraph 506 of its General Survey of 2012 on the fundamental Conventions concerning rights at work, the Committee recalls the importance of ensuring that both boys and girls are provided protection against commercial sexual exploitation. ***In this regard, the Committee requests the Government to indicate whether the prohibition contained in section 3 of the Human Trafficking Act covers the use, procuring or offering of boys under 18 years for the purpose of prostitution in situations not linked to trafficking, in its next report.***

*2. Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously observed that while the Penal Code prohibited subjecting a boy or girl under 15 to an act that is contrary to morals, as well as prohibiting the utterance of indecent words to them, the legislation did not appear to contain provisions prohibiting the use, procuring or offering of all persons under 18 for the production of pornography.

The Committee notes the Government's indication that the Human Trafficking Act prohibits the trafficking of persons under 18 years for the purpose of sexual exploitation. However, the Committee notes that these provisions do not appear to specifically address the use of children for the production of pornography. ***The Committee, therefore, 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.***

*Article 4(3). Periodic examination of the list of hazardous work.* The Committee previously noted that the Order on dangerous, tiring or health endangering tasks for young persons of 1997 provides for a list of types of hazardous work, and that this list was amended in 2004.

The Committee notes the Government's indication that a technical committee was established by the Ministry of Labour to examine the list of types of hazardous work in light of the specific hazards affecting young persons. In this regard, the Committee notes with *satisfaction* that the list of hazardous, tiring or health jeopardizing tasks for young persons was amended on 16 July 2011, and that this revised list is much more comprehensive than the previous list, particularly as it focuses on the types of hazards rather than jobs. The Committee notes that this revised list is divided into

eight categories of work: physical hazards; tasks with psychological and social hazards; tasks with moral hazards; tasks with chemical hazard; tasks with physiological hazards; work with biological hazards; tasks with ergonomic hazards; and other hazards.

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

## Kazakhstan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

*Parts III and V of the report form. Labour inspection and the application of the Convention in practice.*

1. *General application.* The Committee previously noted that, according to the 2006 Multiple Clusters Indicator Survey approximately 3.2 per cent of all children aged 5–14 (approximately 79,515 children) engage in some form of economic activity. The Committee also noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 19 June 2007, expressed concern at the large number of socially vulnerable children engaged in labour (CRC/C/KAZ/CO/3, paragraph 63).

The Committee notes the Government's indication that, as part of a nationwide campaign against child labour, planned and comprehensive investigations of cases of child labour were carried out in various sectors of the economy. The Government indicates that these inspections revealed that child labour was used in car washes (in wet and cold conditions); in city markets (in the transport of goods in handcarts and in unloading goods); in private retail outlets; in agriculture; and as attendants in petrol stations, including at night. The Committee also notes that the Committee on Economic and Social Rights (CESCR), in its concluding observations of 7 June 2010, expressed concern regarding the persistence of child labour in the country (E/C.12/KAZ/CO/1, paragraph 27). Lastly, the Committee notes the information from the ILO–IPEC that Kazakhstan is one of the countries participating in a project to collect national child labour statistics through the ILO–IPEC's Statistical information and monitoring programme on child labour (SIMPOC). Through this project, a child labour survey is planned for the spring of 2013 by the Ministry of Labour and Social Welfare, the Agency of Statistics and SIMPOC. ***The Committee strongly encourages the Government to pursue its efforts, in collaboration with the ILO–IPEC, to ensure that sufficient data on the situation of working children in Kazakhstan is made available. It requests the Government to provide a copy of the child labour survey planned for 2013, once completed. The Committee also urges the Government to strengthen its efforts to effectively monitor and combat child labour in the country, and requests the Government to provide information on the number of inspections carried out, violations detected and penalties imposed in this regard.***

2. *Tobacco and cotton plantations.* The Committee previously noted the Government's statement that it is prohibited to employ minors on tobacco and cotton plantations, and that the List of Works in which it is prohibited to employ workers under the age of 18 (of June 2007) includes both work in cotton and tobacco. However, the Committee noted that the CRC, in its concluding observations of 19 June 2007, expressed concern at the large number of children engaged in labour within the tobacco and cotton industries (CRC/C/KAZ/CO/3, paragraph 63).

The Committee notes the information in the Government's report that, in the course of inspections carried out within the framework of the national campaign against child labour, child labour was identified in the agriculture sector, particularly in the cultivation of tobacco and cotton. The Committee also notes the information in the Government's report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that, following the fifth session of the Government's Inter-departmental Commission for Juvenile Affairs and the Protection of Minors' Rights, recommendations were adopted to address the socio-economic problems faced by rural households engaged in cotton growing and the elimination of child labour in South Kazakhstan province. The Government also indicates that the Department on the Protection of Children's Rights in the Almaty province, in cooperation with a private tobacco enterprise, carried out a "Prevention of Child Labour Programme".

The Committee notes, however, that the CESCR, in its concluding observations of 7 June 2010, expressed concern about child labour in Kazakhstan performed by children of migrant workers in tobacco and cotton farms, and that these children did not attend school during farming periods (E/C.12/KAZ/CO/1, paragraph 27). Moreover, the Committee notes that the Human Rights Committee, in its concluding observations of 19 August 2011, expressed regret at the increase in the number of children employed in cotton and tobacco fields (CCPR/C/KAZ/CO/1, paragraph 16). The Committee must therefore, once again, express its *concern* at reports of a large number of children working in the cotton and tobacco industries, despite legislative prohibitions. ***The Committee urges the Government to intensify its efforts to ensure the effective enforcement of the relevant legislation in these sectors, including through the strengthening of labour inspection in cotton and tobacco plantations. The Committee requests the Government to continue to provide information on measures taken in this regard, and on the results achieved.***

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 2013.]***

## **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Part V of the report form. Application of the Convention in practice.* The Committee previously that noted that studies on child labour in Kazakhstan revealed that children are mostly engaged in the informal and agricultural sectors. In agriculture, child labour was mostly identified in tobacco and cotton harvesting, although this agricultural work is prohibited for persons under 18. In this regard, the Committee also noted the Government's indication that investigations in the Almaty province revealed that children from Kyrgyzstan (aged 6–15) were working in tobacco fields for approximately 75 hours a week, and that Uzbekistani children had been discovered working in cotton fields in the Makhtaaraal district of South Kazakhstan.

The Committee notes the information in the Government's report that, following the 2011 round table on "Working conditions of persons employed in agricultural work", a resolution was adopted to extend the Programme to Prevent Child Labour in the Almaty province. The Government states that these ongoing efforts aim to eliminate the violations identified in a report entitled "Hellish Work Exploitation of Migrant Tobacco Workers in Kazakhstan". This report outlines that many children of migrant workers engage in tobacco cultivation and that this work is hazardous, posing significant health risks, including musculoskeletal disorders, exposure to high temperatures, exposure to pesticides and fumes from tobacco plants, and is performed under poor sanitary and hygiene conditions, often for long hours. The Committee also notes that the Human Rights Committee, in its concluding observations of 19 August 2011, expressed regret at the increase in the number of children employed in cotton and tobacco fields (CCPR/C/KAZ/CO/1, paragraph 16). Therefore, while noting the measures taken by the Government, the Committee expresses its *concern* at reports of a large number of children working in the cotton and tobacco industries under hazardous conditions, despite legislative provisions prohibiting this practice. ***The Committee, therefore, urges the Government to take the necessary measures to ensure that the prohibition on employing children under 18 in both cotton and tobacco harvesting is strictly enforced in practice, including for the children of migrant workers. It requests the Government to continue to provide information on measures taken in this regard, including measures to strengthen the capacity of the labour inspectorate to protect children from this hazardous work. It also requests the Government to provide information on the number of inspections carried out, violations detected and penalties applied, related to work performed by children under 18 in cotton and tobacco harvesting.***

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

## **Kenya**

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1979)**

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* The Committee had previously noted that according to the ILO–IPEC TACKLE project report, four action programmes had been implemented in Kenya under this project which resulted in the withdrawal of about 1,050 children from child labour who were enrolled back in schools or placed in skills training through apprenticeship, in addition to 351 children who have been prevented from dropping out of school and from entering into child labour. It had also noted from the ILO–IPEC TACKLE project report that following the implementation of the Kenya Education Sector Programme (KESP), the net enrolment rates at the primary level increased from 83.2 per cent in 2005 to 92.5 per cent in 2008. The Committee had noted, however, that about 20 per cent of all primary school children did not complete the primary school cycle. It further noted from the ILO–IPEC TACKLE project report that according to the 2009 National Census, nearly 4 million children of school-going age were out of school, which implies that the number of children in or at risk of child labour could be higher than the 756,000 reported in the 2008 Child Labour Analytical Report.

The Committee notes the Government's statement that it is making efforts through the county administration to ensure that children are kept in school and that the Ministry of Labour has been provided with extra budget for the purpose of strengthening the County Child Labour Committees (CCLCs) and carrying out child labour inspections. The Committee further notes the Government's information that it is currently being engaged in consultations with ILO–IPEC to undertake a child labour survey in Kenya which is expected to be carried out in October 2012. The Committee notes from the Labour Commissioner's annual report of 2011, (available on the Government website) that through the activities undertaken by the CCLCs, 788 children were found involved in child labour and its worst forms, 176 children were withdrawn from work and sent to school, 290 children were withdrawn from work and placed in youth polytechnics and vocational training centres. Furthermore, 880 children are being provided with school uniforms and school fees to ensure that they do not drop out of school and engage in child labour.

The Committee further notes that according to the information available from the ILO–IPEC (SNAP project report), the net enrolment rate at primary level increased to 96 per cent in 2011 and the transition rate from primary to secondary school reached 72 per cent. It also notes that within the framework of the SNAP project, a total of 1,951 children (893 girls and 1058 boys) were withdrawn or prevented from child labour through the provision of educational services or training opportunities. In addition, the Committee notes the information from ILO–IPEC that the TACKLE project supported a rapid assessment on child labour in salt mines located in Coast Province. The project also supported the National Council for Children Services to develop a national children database that will help the Government collect data on key child protection indicators which will be used for planning and reporting purposes. While noting the measures taken by the

Government, the Committee must once again express its *deep concern* at the high number of children who are not attending school and are involved or are at risk of being involved in child labour. ***It therefore urges the Government to continue its efforts to improve the situation of child labour in the country. It requests the Government to provide information on the findings of the rapid assessment survey on child labour in salt mines in Coast Province. The Committee also encourages the Government to pursue its efforts to undertake a child labour survey, and to provide any up-to-date statistical information obtained in this regard.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee had previously noted that, under section 7(2) of the Children's Act, every child shall be entitled to free basic education which shall be compulsory. It had also noted the Government's statement that in order to address the gap between the minimum age for admission to employment (16 years) and the age of completion of compulsory schooling (14 years), the Government had waived the tuition fees for the first two years in secondary schooling. It had further noted the Government's indication that it has not envisaged adopting any legislation fixing the age of completion of compulsory education. In this regard, the Committee had noted the information provided by the Government representative of Kenya to the Conference Committee on the Application of Standards in June 2006 concerning the application of Convention No. 138 that it had appointed a committee to review the Education Act with a view to modifying, inter alia, the age of completion of compulsory schooling. Recalling that this Convention had been ratified by Kenya more than 25 years ago, the Conference Committee had urged the Government to ensure that legislation addressing the gap between the age of completion of compulsory schooling and the minimum age for admission to employment or work would be adopted shortly. The Committee had noted with regret that despite the request which it has repeatedly made since 2002, no measures have yet been taken to give effect to the Convention. It had therefore urged the Government to take the necessary measures, without delay, to extend compulsory schooling up to 16 years which is the minimum age for employment in Kenya.

The Committee notes the Government's statement that in the reviewed Education Bill which is currently before the cabinet for approval, it has been proposed that the compulsory schooling be extended to 18 years. In this regard, the Committee must emphasize the desirability of linking the age of completion of compulsory schooling with the minimum age for admission to work, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). It also recalls that according to *Article 2(3)* of the Convention the specified minimum age shall not be less than the age of completion of compulsory schooling. If the minimum age for admission to work or employment is lower than the school-leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work (see General Survey of 2012 on the fundamental Conventions concerning rights at work, paragraph 370). ***Noting that the Education Bill proposes to extend the compulsory schooling age up to 18 years which is higher than the minimum age for admission to work (16 years), the Committee urges the Government to take the necessary measures to ensure that the revision of the Education Bill does not fail to take into account the principle laid down under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). The Committee expresses the firm hope that the Education Bill respecting the provisions of Article 2(3) of the Convention will be formulated and adopted in the near future.***

*Article 3(2). Determination of hazardous work.* The Committee had previously noted the Government's statement that the list of types of hazardous work prohibited to children under 18 years had been approved by the National Labour Board and was awaiting to be published in the Gazette by the Ministry of Labour. It had noted that the draft document entitled "Determining Hazardous Child Labour in Kenya: July 2008" prepared by the Ministry of Labour and Human Resources Development in consultation with the Central Organization of Trade Unions and the Federation of Kenya Employers, contained a comprehensive list of 18 types of hazardous occupations/sectors including: work in domestic households; transport; internal conflicts; mining and stone crushing; sand harvesting; miraa picking; herding of animals; brick making; agriculture; work in industrial undertakings; carpet/basket weaving; building construction; tannery; deep lake and sea fishing; glass factory; matches and fireworks factory; urban informal sector; and scavenging with each sector further providing a list of various activities that are prohibited to children.

The Committee notes the Government's information that the List of Hazardous Work, 2008 is currently being reviewed and a consultant has been appointed with the assistance of ILO-IPEC to enable the normal process of adoption. ***Noting with regret that the Government has been referring to the adoption of this draft regulation on the list of types of hazardous work since 2005, the Committee once again urges the Government to take the necessary measures to ensure that this regulation is adopted in the very near future. It requests the Government to supply a copy thereof once it has been adopted.***

*Article 3(3). Admission to hazardous work as from 16 years of age.* The Committee had previously noted the Government's indication that the competent Minister had issued regulations in respect of periods of work and establishments where children aged at least 16 years may work, including hazardous work, referred to in section 10(4) of the Children's Act. It had also noted the Government's statement that the Children's Act was being reviewed and that a copy thereof would be sent after adoption by the Parliament. It had further noted the Government's statement that the regulations under section 10(4) of the Children's Act were adopted, and that a copy would be provided. The Committee had observed that the Government had been stating since 2005 that this regulation under section 10(4) of the Children's Act had been issued by the Minister, and had strongly urged the Government to supply a copy thereof along with its next report.



The Committee notes the Government's statement that the matter has been taken up with the relevant department and that it will ensure that information on the progress made in the discussions will be supplied as soon as possible. **Observing that Kenya ratified the Convention over 30 years ago and that the question of revision of the Children's Act and the adoption of the regulation under section 10(4) of the Children's Act has been raised for a number of years, the Committee once again urges the Government to take the necessary measures to ensure the adoption of regulations in respect of periods of work and establishments where children aged at least 16 years may work, including hazardous work, referred to in section 10(4) of the Children's Act.**

*Article 7(3). Determination of light work.* The Committee had previously noted that, according to section 56(3) of the Employment Act, the minister may make rules prescribing light work in which a child of 13 years may be employed and the terms and conditions of that employment. It had noted the Government's statement that the rules and regulations which stipulate the types of light work activities permitted to children of 13 years, and which prescribe the hours and conditions of such employment had not yet been completed.

The Committee notes the information in the Government's report that the rules prescribing the light work in which a child of 13 years and above may be employed has been developed and discussed by stakeholders and is currently at the Attorney General's Office for adoption. **The Committee once again expresses the firm hope that the regulations determining the light work activities that may be undertaken by children of 13 years of age and above and the number of hours during which and the conditions in which, such work may be undertaken, will be adopted soon. It requests the Government to provide a copy once they have been adopted.**

*Article 8. Artistic performances.* The Committee had previously taken note of section 17 of the Children's Act, which provides that a child shall be entitled to leisure, play and participation in cultural and artistic activities. It had also noted that the national legislation does not provide for permits to be granted to children participating in cultural artistic performances. The Committee had noted with regret that despite its reiterated comments for many years, no measures had yet been taken by the Government to this effect.

The Committee notes the Government's information that the matter to establish the provisions for granting permits for young persons under the age of 16 years has been taken up by the relevant ministries and the outcome of the discussions will be supplied soon. **The Committee expresses the firm hope that the provisions allowing for young persons below 16 years of age to take part in artistic activities through permits granted in individual cases and which prescribe the number and hours during which, and the conditions in which, such employment or work is allowed, will be formulated and adopted in the near future. It requests the Government to supply information on any progress made in this regard.**

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 102nd Session and to reply in detail to the present comments in 2013.]**

## 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) that the victims of trafficking in Kyrgyzstan include women and children who were exploited in the sex industry in Turkey, China and the United Arab Emirates (May 2006, CRC/C/OPSC/KGZ/1, page 10). The Committee further noted that the CRC, in its concluding observations, 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 (2 February 2007, CRC/C/OPSC/KGZ/CO/1, paragraph 9).

The Committee notes the information from ILO-IPEC that the Ministry of Foreign Affairs is developing a National Action Plan Against Human Trafficking for 2012–15. The Committee also notes the information from the report of the UN Special Rapporteur on violence against women, its causes and consequences, of 28 May 2010, that trafficking of women and children for sexual exploitation and forced labour continues to be a problem in the country (A/HRC/14/22/Add.2, paragraph 33).

The Committee must once again express its **concern** at the lack of data on the prevalence of child trafficking in Kyrgyzstan, as well as reports of the prevalence of this phenomenon in the country. **The Committee, therefore, requests the Government to pursue its efforts to adopt the National Action Plan Against Human Trafficking, and to provide information on the measures taken within this framework to combat the trafficking of persons under the age of 18, once adopted. The Committee also requests 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 children 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, while sections 260 and 261 of the Criminal Code make enticement into prostitution an offence. The Committee also noted the Government's indication that the number of street children and children in risk groups forced into prostitution was rising. Moreover, the Committee noted that the CRC, in its concluding observations, expressed concern that in a number of cases of child prostitution, investigations and prosecutions had not been initiated, and that child victims may be held responsible, tried and placed in detention (CRC/C/OPSC/KGZ/CO/1, paragraphs 17 and 21). The Committee expressed 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.

The Committee notes the Government's statement that prostitution is one of the forms of child labour targeted by the Programme of Action by the Social Partners for the Elimination of the Worst Forms of Child Labour. However, the Committee also notes the information in the Report of the UN Special Rapporteur on violence against women, its causes and consequences, of 28 May 2010, that adolescent girls in the country are particularly vulnerable to commercial sexual exploitation in urban areas, with the majority of the girls involved coming from rural areas (A/HRC/14/22/Add.2, paragraph 35). ***Noting the absence of information on the application in practice of the provisions of the Criminal Code relating to child prostitution, the Committee once again requests the Government to provide this information, in particular statistics on the number and nature of infringements reported, investigations, prosecutions, convictions and sanctions applied. It also 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. Lastly, the Committee once again requests the Government to indicate whether the national legislation contains provisions specifically criminalizing the client who uses children under 18 years of age for the purpose of prostitution.***

*Clause (d). Hazardous work. Children working in agriculture.* The Committee previously noted 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) and that a detailed list of occupations prohibited for persons under 18 years had been approved. Nonetheless, the Committee noted that the use of hazardous child labour in the agricultural sector was widespread, particularly in tobacco, rice and cotton fields, and that in rural areas, regulations prohibiting children from engaging in such work were not strictly enforced. In this regard, the Committee noted the statement in a 2006 report of the International Confederation of Free Trade Unions (now the International Trade Union Confederation) 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 indicated that, in some cases, classes are cancelled and children are sent to the fields to pick cotton. The Committee further noted the information from ILO-IPEC that many of the children working in tobacco, rice and cotton fields in Osh and Jalalabat regions faced 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 rodent bites, and hazards related to tobacco production (skin irritation and intoxication).

The Committee notes the Government's statement that work in the fields is one of the forms of child labour targeted by the Programme of Action by the Social Partners for the Elimination of the Worst Forms of Child Labour. The Committee also notes the Government's statement that 19.7 per cent of child labourers in the country are engaged in the agricultural sector. Furthermore, the Committee notes the continued implementation of a project aimed at eradicating child labour in the tobacco industry, developed by a non-governmental organization and carried out by trade union workers in the agro-industrial sector. The Government states that the goal of the project is to devise and introduce a mechanism for eliminating child labour in two pilot districts in the southern region of the country. Through the project, 1,123 families were given microcredit in 2011 and 131 mutual assistance groups were set up. The Government states that this project has enabled the removal of 3,142 children in the two districts from work in the tobacco industry. In addition, the Committee notes the information from ILO-IPEC of July 2012 that, through the project entitled "Combating Child Labour in Central Asia – Commitment becomes Action (PROACT CAR Phase III)", action has been taken to address hazardous child labour in agriculture. For example, through an action programme to support the establishment of a child labour free zone in Chuy region, implemented by the Trade Unions of Education and Science Workers of Kyrgyzstan (TUESWK) during the period June 2011 to August 2012, 140 children (75 boys and 65 girls) were withdrawn from, or prevented from entering, hazardous child labour in agriculture and the urban informal sector. In addition, 15 children (six boys and nine girls) were withdrawn from hazardous child labour in agriculture in the first six months of 2012 through a school-based package of services, including non-formal education, reintegration into formal education, school supplies, monthly food baskets, extra-curricular activities, awareness raising, recreational activities and family counselling. ***Taking due note of the measures taken by the Government, the Committee urges the Government to pursue its efforts to ensure that persons under 18 years of age are protected against hazardous agricultural work, particularly in the cotton, tobacco and rice-growing sectors, and to provide information on the results achieved through the abovementioned initiatives. It also requests the Government to take the necessary measures to ensure the effective enforcement of regulations prohibiting***

*children's involvement in hazardous agricultural work, and to provide information on the steps taken in this regard, in its next report.*

*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 in children.* The Committee previously noted a disparity between the number of trafficking victims identified and the number of victims receiving assistance, and it requested the Government to strengthen its efforts in this regard.

The Committee notes the information from the International Organization for Migration that it is implementing a project entitled "Combating Trafficking in Persons in Central Asia: Prevention, Protection and Capacity Building" in the country from 2009–12, which includes awareness raising and assistance for victims. The Committee also notes the implementation in Kyrgyzstan of the Joint Programme to Combat Human Trafficking in Central Asia of the ILO, the United Nations Development Programme and the United Nations Office on Drugs and Crime under the UN Global Initiative to Fight Human Trafficking, which includes support for the development of national referral mechanisms established between law enforcement agencies and civil society organizations. ***The Committee requests the Government to provide information on the measures taken, including through these projects, to provide the necessary and appropriate direct assistance for the removal of child victims of trafficking, and for their rehabilitation and social integration. It also requests the Government to supply information on the results achieved, including the number of victims of trafficking under the age of 18 who have benefited from repatriation and rehabilitative assistance.***

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

## Lebanon

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2003)***

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.* The Committee previously noted that the Labour Code only applies to work performed under an employment relationship (by virtue of sections 1, 3 and 8 of the Code). The Committee reminded the Government that the Convention applies to all branches of economic activity and covers all types of employment or work, whether they are carried out on the basis of an employment relationship or not, and whether they are remunerated or not. It requested the Government to provide information on the manner in which children who are not bound by an employment relationship are covered by the protection provided for in the Convention. The Committee noted the information in the Government's report that Chapter 2, section 15, of the draft amendments to the Labour Code, prepared by a tripartite committee, provides for rules governing "the employment or work of young persons". The Committee noted the Government's statement that the principles in this amendment therefore include all young persons, and not solely those bound by an employment relationship. ***The Committee requests the Government to take the necessary measures to ensure the adoption in the near future of the draft amendments to the Labour Code relating to self-employed children or children in the informal economy, and to provide a copy, once adopted.***

*Article 2(2). Minimum age for admission to employment or work.* In its previous comments, the Committee noted that, at the time of ratifying the Convention, Lebanon declared 14 years as the minimum age for admission to employment or work and that Act No. 536 of 24 July 1996, amending sections 21, 22 and 23 of the Labour Code, prohibits the employment of young persons before they complete 13 years of age (*i.e. beginning of 14 years*). The Committee also noted the Government's information that it intended to amend the Labour Code, to prohibit the employment or work of young persons before they complete 14 years (*i.e. beginning of 15 years*). The Committee noted the information in the Government's report that section 19 of the draft amendment to the Labour Code prohibits the employment or work of persons under the age of 15 years. Noting that the Government specified a minimum age of 14 years at the time of ratification, the Committee drew the Government's attention to the fact that *Article 2(2)* of the Convention establishes the possibility for a State which decides to raise the initially specified minimum age for admission to employment or work to notify the Director-General of the International Labour Office by means of a further declaration. This enables the age fixed by the national legislation to be aligned to that provided for at international level. ***The Committee requests the Government to provide information on any progress made in the adoption of the draft amendments to the Labour Code.***

*Article 2(3). Compulsory education.* The Committee previously noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 2002 (CRC/C/15/Add.169), while noting that basic education was free and compulsory until the age of 12, expressed concern about its implementation in practice. It noted the Government's indication that Act No. 686/1998 relating to free and compulsory education in the primary phase has not so far been applied, due to the economic conditions of the country and the insufficient educational facilities. The Committee also noted that, according to the 2004 ILO–IPEC survey that in Lebanon, 18.9 per cent of children drop out of school at the elementary level (6–11 years), 22.8 per cent at the intermediate level (12–15 years) and 10.6 per cent at the secondary level. According to this survey, dropping out of school was a major contributing factor to the early participation of boys and girls in the labour market.

The Committee noted the information in the Government's report that 250 children (in three schools), who were at risk of dropping out, were assisted and given additional lessons through a programme entitled "Strengthening courses in basic subjects". The Committee also noted the information in the November 2008 report of the Minister of Education and of Higher Education submitted to UNESCO for the 48th International Conference on Education entitled "The Development of Education in Lebanon", that the Government intends to raise the age at which compulsory education ends, from the current 12 years to 15 years of age. The Committee further noted that the CRC, in its concluding observations of 8 June 2006 expressed concern that in primary education, parents are still charged for some costs of education despite the legal guarantee of free education, and that dropout rates have increased at this level while enrolment in secondary education declined (CRC/C/LBN/CO/3, paragraph 63).

The Committee was of the view that compulsory education is one of the most effective means of combating child labour and it is important to emphasize the necessity of linking the age of admission to employment to the age limit for compulsory

education. If the two ages do not coincide, various problems may arise. If compulsory schooling comes to an end before the young persons are legally entitled to work, there may be a period of enforced idleness. However, if young persons are legally entitled to work before the end of completion of compulsory schooling, children from poor families might be tempted to drop out of education and work in order to earn money (see ILO: *Minimum Age*, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146 concerning minimum age, 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). Noting the Government's intention to raise the age of completion of compulsory schooling to 15 years, the Committee reminded the Government that pursuant to *Article 2(3)* of the Convention the minimum age for admission to employment (currently 14 years) should not be lower than the age of completion of compulsory schooling. **Therefore, the Committee urges the Government to intensify its efforts to provide for compulsory education up until the minimum age for admission to work (which is currently 14 years, and will be 15 years with the adoption of the draft amendments to the Labour Code). The Committee requests the Government to provide information on any new developments on this point.**

*Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work.* The Committee previously noted that section 1 of Decree No. 700 of 1999 prohibits the employment of young persons before they complete 17 years of age (*i.e. beginning of 18 years*). The Committee also noted that Decree No. 700 of 1999 provides for a detailed list of the types of hazardous work in which it is prohibited to employ young persons. The Committee further noted the information in the Government's report that the National Committee to Combat Child Labour (NCCL) was formulating a statute on the worst forms of child labour which, in accordance with *Article 3(1) and (2)* of the Convention, prohibits the employment of children under 18 years in work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.

The Committee noted that section 20 of the draft amendments to the Labour Code prohibits the employment or labour of children before they reach 18 years in work which, by its nature or the conditions in which it is carried out, is likely to expose them to danger. The Committee also noted that the "Draft Decree on the prohibition of employing children before they complete 18 years of age in work which is likely to jeopardize their health, safety or morals" (Draft Decree Prohibiting Hazardous Work), was issued by Advisory Opinion No. 239 of the State Council on 26 May 2009 and will be promulgated following approval by the Council of Ministers. The Committee noted the Government's statement that the Draft Decree Prohibiting Hazardous Work was formulated by the NCCL following the study entitled "Worst Forms of Child Labour – under 18 years old in Lebanon". The Committee further noted that section one of the Draft Decree Prohibiting Hazardous Work provides for the annulment of Decree No. 700 of 1999, and that section two contains a list of the worst forms of child labour prohibited for children under 18, including work with physical, psychological and moral hazards, and work that would limit the young persons' access to education and training. **The Committee urges the Government to take the necessary measures to ensure the adoption by the Council of Ministers of the Draft Decree Prohibiting Hazardous Work (as issued by Advisory Opinion No. 239 of the State Council on 26 May 2009).**

*Article 3(3). Authorization to undertake hazardous work from 16 years.* The Committee previously noted that section 23(1) of the Labour Code prohibits the employment of young persons under 15 years of age in industrial projects and activities which are physically demanding or detrimental to their health, as set out in Annexes 1 and 2. The Committee observed that section 23(1) of the Labour Code was not in conformity with *Article 3(3)* of the Convention, to the extent that it appeared to allow young persons from 15 to 16 years to perform hazardous work. The Committee noted the information in the Government's report that the draft amendment to the Labour Code includes the principles specified in *Article 3(3)* of the Convention.

The Committee noted the information in the Government's report that, by virtue of an order of the Ministry of Labour, section 20(3) of the draft amendments to the Labour Code authorizes employment or work in hazardous types of employment as of 16 years of age, under certain conditions. The Committee also noted that section 3 of the Draft Decree Prohibiting Hazardous Work contains a list of activities which may be authorized as of 16 years of age, on the condition that the health, safety and morals of young persons are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. The Committee observed that this list prohibits the employment of children under 16 years in work with chemical hazards, physical hazards, intellectual or social hazards, safety hazards (such as heights), some types of agricultural work, work in slaughterhouses, work in construction, work in transport, work in horse races, work in restaurants or hotels, or work in factories with more than 20 employees. **The Committee expresses the firm hope that section 3 of the Draft Decree Prohibiting Hazardous Work, concerning the authorization of some types of hazardous work for persons between the ages of 16 and 18, will be adopted shortly and requests the Government to provide information on any developments in this regard.**

*Article 4. Exclusion from the application of the Convention of limited categories of employment or work.* In its previous comments, the Committee noted the Government's indication that section 7 of the Labour Code excludes from its application, and consequently from the scope of application of the Convention, the following categories of work: (a) workers in households in Beirut; (b) agricultural undertakings which are unrelated to trade and industry and which shall have their own legislation; (c) undertakings which only employ family members under the management of the father, mother or guardian; and (d) Government departments and municipal bodies with respect to daily and temporary workers not covered by the regulations governing officials. The Committee also noted the Government's reference to the draft amendments to the Labour Code which would regulate the first three of the abovementioned four excluded categories, by a decree issued by the Council of Ministers.

The Committee noted that section 2(2) of the Draft Decree Prohibiting Hazardous Work, submitted with the Government's report, prohibits, for persons under the age of 18, work with psychological hazards, including domestic work and work where the young person sleeps outside of the home. The Committee also noted that section 3(2) of the Draft Decree Prohibiting Hazardous Work, concerning work prohibited for children under the age of 16, prohibits the employment of a young person in agricultural work (including family undertakings) which requires a tractor, work involving sharp equipment, work involving high ladders or trees or the mixing or dispersal of pesticides and fertilizers and the picking or handling of poisonous plants (including tobacco). The Committee observed that, by virtue of these provisions in the Draft Decree Prohibiting Hazardous Work, effect is given to the Convention with regard to the previously excluded categories of employment. **The Committee expresses the firm hope that the provisions of the Draft Decree Prohibiting Hazardous Work relating to domestic workers and children employed in agricultural work (including family undertakings) will be adopted shortly and requests the Government to provide information on any developments in this regard.**

*Article 6. Vocational training and apprenticeship.* The Committee previously noted the information in the Government's report that section 16 of the draft amendment to the Labour Code provides for the definition of "training contract" and states that the minimum age to receive vocational training under a contract is 14 years, provided that conditions to safeguard the health, safety or morals of the young persons in question are respected. The Committee noted the Government's statement

that amendments are still ongoing to the proposed draft amendments. ***It requests the Government to provide information on any progress made in adopting section 16 of the draft amendments to the Labour Code, fixing a minimum age of 14 years for entry into an apprenticeship, in conformity with Article 6 of the Convention.***

***Article 7. Light work.*** Following its previous comments, the Committee noted the information in the Government's report that section 19 of the draft amendments to the Labour Code provides that employment or work of young persons in light work may be authorized when they complete 13 years of age (except in different types of industrial work in which the employment or work of young persons under the age of 15 years old is not authorized), on the condition that such employment or work, by its nature or the circumstance in which it is carried out, does not jeopardize their development, health, safety or morals. Section 19 further states that this work should not weaken their capacity to benefit from instruction received, nor should it impact on their participation in vocational orientation and training approved by the competent authority. The Committee also noted the Government's statement that light work activities shall be determined by virtue of an Order promulgated by the Ministry of Labour. The Committee further noted that the Ministry of Labour set up a committee, pursuant to Memorandum 58/1 of 20 June 2009, which in consultation with employers' and workers' organizations, shall formulate this statute, among other labour standards. In addition, the Committee noted the Government's indication that the Ministry of Labour, in coordination with ILO-IPEC, is preparing a study on the classification of occupations undertaken by working children, within the framework of the ILO-IPEC programme "Supporting the national strategy for the elimination of child labour in Lebanon, third phase", so as to formulate this statute on light work. ***The Committee requests the Government to take the necessary measures to ensure the formulation and adoption of a statute determining light work activities, in conformity with Article 7 of the Convention, following the adoption of the draft amendments to the Labour Code.***

The Committee noted the Government's statement that the draft amendments to the Labour Code have reached an advanced stage and will be referred to the competent authority for its adoption in the shortest delay. The Committee also noted the Government's statement that some amendments are still ongoing to the draft amendments, to achieve additional conformity between its provisions and the provisions of Arab and international labour Conventions. ***Considering that the Government has been referring to the draft amendments to the Labour Code for a number of years, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that the amendments are adopted in the near future. Furthermore, 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 and invites it to consider technical assistance from 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.***

### ***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 reads as follows:

***Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar to slavery. Trafficking.*** The Committee previously noted that the relevant Lebanese legislation does not specifically prohibit the trafficking of women and children. The Committee noted that the cooperation project, the "Anti-trafficking project", had been agreed upon by the United Nations Office on Drugs and Crime (UNODC) and the Ministry of Justice (MoJ) to ensure the conformity of national legislation with the Protocol against the Smuggling of Migrants by Land, Sea and Air and with the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. According to the project document annexed to the Government's report, the existing Lebanese legislation was reviewed to identify gaps and formulate specific recommendations regarding necessary amendments and adoption of specific anti-trafficking legislation. The Committee noted that this legal review was sent to the MoJ for comments and clearance.

The Committee noted the information in the Government's report that the amendments to the Labour Code, prepared by a tripartite committee (which was set up by virtue of Order No. 210/1 of 20 December 2000), include provisions relating to the sale and trafficking of children. The Committee noted the information in the Government's report that section 33(a) of these amendments penalizes any person who participates, encourages or facilitates all forms of slavery or practices similar to slavery, such as the sale and trafficking of children. The Committee observed that it has drawn the Government's attention to the lack of legislation prohibiting the sale and trafficking of children since 2005. ***The Committee therefore urges the Government to take the necessary measures to ensure the adoption of the draft amendments to the Labour Code relating to the prohibition of the sale and trafficking of all persons under the age of 18, as a matter of urgency.***

***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 particular for the production and trafficking of drugs.*** The Committee previously noted the Government's information that section 33(b) of the draft amendments to the Labour Code specifies that any person who participates, encourages, facilitates or incites anyone to use, procure or offer a child or young person for the production of pornography or for pornographic performances is liable to punishment under the Penal Code, in addition to the penalties imposed by the Labour Code. Furthermore, the Committee noted the Government's information that section 33(c) of the draft amendments to the Labour Code provides that any person who participates, encourages, facilitates or incites another to use, procure or offer a child or young person for illicit activities, especially for the production and trafficking of drugs, commits a penal crime under the Penal Code.

The Committee noted the Government's statement that the amendments to the Labour Code are in their last stages and they shall be referred to the competent authorities for adoption within the shortest delay. However, the Committee also noted the Government's statement in its report submitted under Convention No. 138 that further revision to the draft amendment to the Labour Code are still necessary. ***The Committee requests the Government to take the necessary measures to ensure the adoption of the draft amendments to the Labour Code prohibiting the use, procuring or offering of persons under the age of 18 for the production of pornography or for pornographic performances, and the use, procuring or offering of persons under the age of 18 for illicit activities.***

***Clause (d). Hazardous work.*** The Committee previously noted the Government's information that Decree No. 700/1999 prohibits the employment of young persons before they complete 17 years of age (i.e. beginning of 18 years) in dangerous activities enumerated according to their nature. The Committee also noted the Government's indication that the National

Committee to Combat Child Labour (NCCL) was formulating a statute on the worst forms of child labour to amend Decree No. 700 of 1999 and supplement section 23(1) of the Labour Code.

The Committee noted that section 20 of the draft amendments to the Labour Code prohibits the employment of children under 18 years in work which, by its nature or the conditions in which it is carried out, is likely to expose them to danger. The Committee also noted that the “Draft Decree on the prohibition of employing children before they complete 18 years old in work which is likely to jeopardize their health, safety or morals” (Draft Decree Prohibiting Hazardous Work), was approved by Advisory Opinion No. 239 of the *shura* on 26 May 2009, and will be promulgated following approval by the Council of Ministers. The Committee further noted the Government’s statement that the Draft Decree Prohibiting Hazardous Work was formulated by the NCCL following the study entitled “Worst Forms of Child Labour under 18 years old in Lebanon”.

The Committee noted that section 1 of the Draft Decree Prohibiting Hazardous Work provides for the annulment of Decree No. 700/1999, and that section 2 provides a list of the worst forms of child labour prohibited for children under 18, including work with physical, psychological and moral hazards, and work that would limit the young persons’ access to education and training. **The Committee requests the Government to take the necessary measures to ensure the adoption by the Council of Ministers of the Draft Decree Prohibiting Hazardous Work for children under 18 as a matter of urgency and requests it to provide information on developments in this regard.**

**Considering that the Government has referred to these draft amendments to the Labour Code for a number of years and, given that Article 1 of the Convention obliges member States to take “immediate” measures to prohibit the worst forms of child labour, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that the amendments are adopted as a matter of urgency. Furthermore, 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 and invites it to consider technical assistance from 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.**

## Lesotho

### Minimum Age Convention, 1973 (No. 138) (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 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee previously noted that the Programme Advisory Committee on Child Labour had endorsed the Action Plan for the Elimination of Child Labour (APEC) in 2008. The Government indicated that the APEC had been submitted to Cabinet for approval. The Committee also noted that the Children’s Protection and Welfare Bill had yet to be adopted, and had urged the Government to take measures in this regard.

The Committee notes with satisfaction that the Children’s Protection and Welfare Act was adopted on 8 June 2011. However, the Committee also notes the Government’s indication that the APEC has not yet been submitted to Cabinet. The Government indicates that a review of the APEC is necessary to ensure that the recommendations are still relevant and that a tripartite stakeholder workshop will be convened by September 2011 in this regard. **Observing that the APEC has been awaiting Cabinet approval since 2008, the Committee urges the Government to strengthen its efforts to ensure the appropriate review, adoption and implementation of the APEC in the near future.**

*Article 2(1). Scope of application. Self-employment and domestic work.* In its previous comments, the Committee noted that the provisions of the Labour Code excluded self-employment from its application. However, the Committee subsequently noted that the draft revision of the Labour Code contained a provision to apply the Labour Code’s sections on the minimum age and related issues to self-employed children and children working in the domestic sector. While the Government indicated that efforts were being made towards the adoption of the draft revision, the Committee observed that the Government had been referring to the impending adoption of the draft revision to the Labour Code since 2006.

The Committee notes the Government’s indication that, pursuant to tripartite discussion at the National Advisory Committee on Labour, separate regulations will be promulgated on domestic work, and that this sector will not be regulated through the revised Labour Code. Moreover, the Committee notes that the revised Labour Code has been given to the Government’s legal draftsmen in preparation for submission to Parliament. In this regard, the Committee notes the Government’s indication that the law does not currently provide for inspections to be carried out in the informal economy, hindering the detection of child labour. **Therefore, the Committee urges the Government to take the necessary measures to ensure that the revised Labour Code provides the protection guaranteed in the Convention to children working on a self-employed basis and in the informal economy, and to ensure the adoption of the revised Code without delay. In addition, the Committee requests the Government to take the necessary measures to ensure that the regulations developed on domestic work are consistent with the Convention with regard to the minimum age for admission to work, hazardous work and light work.**

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that primary education is not compulsory and that many children do not have adequate access to education. Additionally, the Committee noted the information from UNESCO’s *Education for All: Global Monitoring Report* of 2010 that there were approximately 101,000 out-of-school children between the ages of 6 and 12. However, the Committee noted that a Bill introducing free and compulsory education (and including sanctions for parents if they did not send their children to school) was before Parliament. Recalling that compulsory education is one of the most effective means of combating child labour, the Committee requested the Government to take the necessary measures to ensure the adoption of the Bill.

The Committee notes with interest that the Education Act was adopted in 2010. The Committee notes that, pursuant to the Education Act, primary school is free and compulsory. However, the Committee observes that primary school is generally completed at the age of 13 years in Lesotho. Nonetheless, the Government indicates that the issue of linking the age of completion of compulsory schooling with the age of admission to work will be discussed with the Ministry of Education and Training. In this regard, the Committee once again 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 inactivity or the early or premature entry into employment

or work. **The Committee encourages the Government to pursue its efforts to ensure compulsory education up to the minimum age of employment (of 15 years), and urges the Government to collaborate with the Ministry of Education and Training in this regard. The Committee also requests the Government to provide a copy of the Education Act, with its next report.**

*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 into line with the requirements of *Article 6* of the Convention. However, the Government also indicated that there was no regularized system of vocational and technical education, that no consultations had been held on this matter and that there was no minimum age for admission to apprenticeships.

The Committee notes the Government's statement that this matter will be taken up with the Ministry of Education and Training. In this regard, the Committee once again 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. Subsequently, the Committee noted the Government's indication that the draft revision of the Labour Code includes a provision (proposed section 124(6)) 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.

The Committee notes the Government's statement that the proposed section 124(6) of the revised Labour Code will only permit the performance of light work in technical schools and similar institutions. However, observing the significant number of children under the minimum age who are, in practice, engaged in economic activity (36 per cent of children aged 13 years and 38 per cent of children aged 14 years according to the most recent Multiple Indicator Cluster Survey), the Committee encourages the Government to consider regulating light work *outside* of technical schools to ensure that these children benefit from the protection of the Convention. If the Government decides to permit light work for children between the ages of 13 and 15 outside of technical schools, the Committee draws the Government's attention to *Article 7(3)* of the Convention, which states that 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 requests the Government to provide information on any developments with regard to the regulation of light work activities, particularly with regard to providing legal protection to children between the ages of 13 and 15 who are, in practice, engaged in light work outside of technical schools.**

*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 Government indicated 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.

The Committee notes the Government's indication that it is making efforts to conduct a new child labour survey, and that consultations were held with ILO-IPEC in June 2011 regarding technical assistance for this purpose. The Committee also notes the Government's statement that it is facing considerable capacity constraints which makes it difficult to extend inspection services to the informal economy, and that this is exacerbated by the lack of a legal basis to perform inspections in the informal economy. The Government indicates that inspection reports therefore only relate to commercial and industrial undertakings, and do not contain information on the number and nature of violations related to child labour. **Noting the Government's indication under Article 2(1) that the adoption of the revised Labour Code is imminent, thereby providing the legal basis for carrying out inspections in the informal economy, the Committee urges the Government to strengthen the capacity and expand the reach of the labour inspectorate to areas in which children work, particularly the informal economy. Furthermore, the Committee urges the Government to pursue its efforts to undertake a child labour survey, and to provide any up-to-date statistical information obtained in this regard.**

**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: 2001)**

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

*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 urged the Government to take immediate measures to ensure the adoption of legislation prohibiting the sale and trafficking of children.

The Committee notes with satisfaction that the Anti-Trafficking in Persons Act was enacted into law on 11 January 2011, and that section 5(1) and (2) of this Act prohibits the trafficking of children. Section 5(2) of this Act provides for a maximum penalty of life imprisonment or a fine of up to 2,000,000 Lesotho malotis (LSL) for this offence (approximately US\$253,453). In addition, the Committee notes that section 2 of the Anti-Trafficking in Persons Act defines a child as a person who is under 18 years of age and defines trafficking to include the recruitment, transportation, transfer, harbouring, sale, supply or receipt of persons, within and across the borders of Lesotho by means of the use of threat, force or other means of coercion, abduction, kidnapping, fraud or deception, the abuse of power, law or legal process or a position of vulnerability or debt bondage or the giving or receiving of payment to obtain the consent of a person having control over another person, for the purpose of exploitation. Moreover, the Committee notes with interest that the Children's Protection and Welfare Act was adopted on 31 March 2011 and that section 67 thereof prohibits the trafficking of children (defined as all person under the age of 18, pursuant to section 3 of the Act).

*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. However, it noted that the section 129A(3)(c) of the

draft revision of the Labour Code prohibited the worst forms of child labour, including the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.

The Committee notes that section 18 of the Children's Protection and Welfare Act states that a child has the right to be protected from, inter alia, being involved in the production, trafficking or distribution of drugs. However, the Committee observes that this provision does not appear to explicitly prohibit the use, procuring or offering of a child for other illicit activities, nor does it provide for penalties for adults who engage in this practice. Regarding the draft revision of the Labour Code, the Committee notes the Government's statement that the Code is currently being prepared for presentation to Parliament and that it hopes that the draft revision of the Labour Code will be adopted early next year. **Observing that the Government has been referring to the impending adoption of the draft revision of the Labour Code since 2006, the Committee urges the Government to take the necessary measures to ensure its adoption in the near future, to prohibit the use, procuring or offering of a child under 18 for illicit activities.**

*Clause (d). Hazardous work. Child domestic work.* 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 further noted the Government's reference to the provision inserted in the draft revision of the Labour Code which provides for the protection of children engaged in domestic work. In addition, the Committee noted 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" that girls as young as 12 years work as domestic workers, and that these children often work long exhausting days for low pay.

The Committee notes the Government's statement in its report submitted under the Minimum Age Convention, 1973 (No. 138), that, pursuant to tripartite discussions at the National Advisory Committee on Labour, separate regulations will be promulgated on domestic work, instead of regulating domestic work through the Labour Code. The Committee also notes the Government's statement in its report to the Committee on the Elimination of Discrimination Against Women of 26 August 2010 that domestic work is an unregulated sector and the rights of these workers are open to abuse (CEDAW/C/LSO/1-4, paragraph 68). **The Committee accordingly urges the Government to take immediate and effective measures to ensure that child domestic workers are protected from hazardous work. In this regard, it requests the Government to take measures to ensure that the regulations promulgated on domestic work prohibit hazardous work in this sector to all children under 18 years of age. It further requests the Government to provide a copy of these regulations, once adopted.**

*Part V of the report form. Application of the Convention in practice.* The Committee noted the comments of the Commissioner of Labour of 2 March 2008 indicating that child labour continues to be a problem in Lesotho, particularly with regard to under-age domestic workers and herders. The Committee also noted the information in the joint document produced by ILO-IPEC and the Ministry of Employment and Labour of 2006 indicating that the trafficking of children, commercial sexual exploitation, the use of children by adults in illegal activities and hazardous street work are all present in Lesotho. The Committee requested the Government to provide information on the nature, extent and trends of the worst forms of child labour.

The Committee notes the information in the Government's report that a child labour survey needs to be carried out in order to determine the nature, extent and trends of child labour in Lesotho, as the last such survey was carried out in 2004. The Government indicates that meetings were held with ILO-IPEC in June 2011 regarding technical assistance for this purpose. **The Committee strongly encourages the Government to pursue its efforts to undertake a survey on child labour and its worst forms, to ensure that up-to-date statistical information on this subject is made available. It also requests the Government to provide, along with its next report, information on the number and nature of infringements reported, investigations, prosecutions, convictions and penalties imposed with regard to the worst forms of child labour. 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.

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

## Madagascar

### **Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124) (ratification: 1967)**

The Committee takes note of the Government's report and the communication of 27 August 2012 from the General Confederation of Workers' Unions of Madagascar (CGSTM).

*Article 2(1) of the Convention and Part V of the report form. Medical examination of persons under 21 years of age prior to underground work in mines and application of the Convention in practice.* The Committee noted previously that section 82 of Decision No. 58-AR of 8 May 1958 setting forth the safety rules applying to mines and quarries provides that no worker may be assigned to underground work without first undergoing a medical examination finding him to be fit for such employment. The Committee also noted that sections 7, 8 and 9 of Order No. 2806 of 8 July 1968 to organize occupational medical services provide in particular that employers must have regular visits organized for periodic medical examinations and that all workers are required to undergo a medical examination that includes an x-ray film of the lungs prior to taking up employment or in the month following at the latest. Furthermore, the Committee noted with interest that by virtue of section 8 of Decree No. 2003-1162 of 17 December 2003 to organize occupational medicine, every worker, before being hired or at the latest in the month after being hired, "shall undergo a medical examination consisting of at least an x-ray film of the lungs". Pursuant to sections 7 and 9 of the Decree, periodical medical examinations are also compulsory and include "special medical examinations for workers exposed to the risk of occupational diseases".

The Committee notes the CGSTM's assertion that to its knowledge, there are no longer any mining companies in Madagascar's formal sector that carry on underground work and employ young persons within the meaning of the



Convention. The problem does arise, however, in family undertakings in the informal sector, for example in the sapphire mines of the Ilakaka region, in which minors work up to 50 meters underground without proper safety precautions or ventilation. The CGSTM reports that the absence of adequate legislation means that these young people undergo neither a pre-employment medical examination to ascertain their fitness nor any regular medical checks. Lastly, the CGSTM states that the Government has not as yet undertaken any action to resolve the problem.

The Committee observes that children working in family undertakings on an informal basis appear not to be covered by the legislation regarding medical examinations. The Committee points out that according to *Article 2* of the Convention, a thorough medical examination for fitness for employment and periodic re-examinations at intervals of not more than one year shall be required for the employment or work underground in mines of persons under 21 years of age, regardless of whether the work is performed in the formal sector or the informal economy and whether or not it is based on an employment relationship. ***The Committee asks the Government to take steps to ensure that all children and young persons under 21 years of age enjoy the protection afforded by the Convention, particularly those who work in family undertakings in mining and quarrying in the informal sector. It asks the Government to provide information on these matters in its next report, and particularly on the effect given in practice to the provisions requiring a pre-employment medical examination and subsequent periodic re-examinations for young persons under 21 years of age working underground in family undertakings in the informal sector.***

*Article 5(4) and (5). Records pertaining to employees under 21 years of age.* In its previous comments the Committee noted that according to the Government, a record must be kept by the employer and must consist of three parts: personal particulars, data concerning the worker's position within the undertaking and a separate section for visas, observations and warnings issued by the labour inspector to the undertaking. The Committee noted that although the sample record provided by the Government in its report clearly indicates the employee's date of birth, it contains no indication of the nature of the work and does not include a certificate attesting fitness for employment, as required by *Article 4(4)* of the Convention. The Committee nonetheless noted that by virtue of section 6 of Decree No. 2007-563 on child labour, the employer must keep a record showing the full identity, the type of work, the wage, the number of hours of work, the state of health, the schooling and the situation of the parents of each child employee under the age of 18 years.

The Committee notes the information supplied by the Government to the effect that Order No. 129-IGT of 5 August 1957 establishing a standard employer's register, pursuant to section 252 of the Labour Code, is still in force. The Government states that the Order needs revision in order to adapt it to present circumstances and that the Committee's recommendations will be forwarded to the National Labour Council, a body for tripartite consultation. The Committee accordingly observes that it would appear that there is still no requirement for employers' records to contain a certificate of fitness for employment in respect of young persons aged from 18 to 21 years engaged in underground work. ***The Committee again asks the Government to take the necessary steps to ensure that employers are required to keep a record showing the date of birth, duly certified wherever possible, an indication of the nature of the occupation and a certificate attesting fitness for employment, for all persons between 18 and 21 years of age who are employed or work underground, and to make these records available to the workers' representatives at their request. It asks the Government to supply information on progress made in this regard in its next report.***

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes the communication of the General Confederation of Workers' Unions of Madagascar (CGSTM) of 27 August 2012, and the Government's report.

*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 National Survey on Child Labour (ENTE) of 2007, conducted by the National Bureau of Statistics in conjunction with ILO/IPEC/SIMPOC, more than one child out of four in Madagascar between 5 and 17 years of age (28 per cent) is economically active, that is 1,870,000 children. The participation rate in economic activity increases with age: while 12 to 15 per cent of children between 5 and 9 years of age are economically active, the rate rises to over 30 per cent in the 10–14 year age group, and to 55 per cent in the case of children between 15 and 17 years. The problem is more acute in rural areas, where 31 per cent of children are engaged in an economic activity, compared with 19 per cent in urban areas. Most economically active children are in the agricultural and fishing sector, where most of them (two out of three) help families. In the case of children between 5 and 14 years of age, 22 per cent are engaged regularly in an economic activity and 70 per cent attend school. The Committee notes the allegations of the CGSTM that many underage children from rural areas are sent to large towns by their parents to work in the domestic sector. These children are exposed to household work, which can be exhausting and they sometimes do not have leave or fixed hours of work. Moreover, these children have not necessarily completed their compulsory schooling.

The Committee noted previously the adoption of the National Plan of Action to Combat Child Labour in Madagascar (PNA), and the six plans of action covering the rural sector, mining and quarrying, manufacturing, domestic work, catering and trade, and miscellaneous activities. It noted the Government's indication that the first phase of the PNA lasted five years and ended in 2009. The PNA was in an extension phase, and a policy plan for the second phase of the

PNA had been drawn up. The Government also indicated that before the end of 2011 certain activities would be undertaken to support the implementation and extension of the PNA strategies.

The Committee notes the CGSTM's indication that it reiterates the observations made in its previous communication.

The Committee notes the Government's indications concerning the activities to combat child labour. The Government indicates in particular that the workplan of the National Committee to Combat Child Labour (CNLTE) for 2012–13 has been adopted. The Government also reports several projects that are currently being implemented: the AMAV project against child domestic labour; the workplan against child labour in vanilla plantations in the Sava region; the workplan to combat the commercial sexual exploitation of children; and the plan of action concerning child labour in mines and stone quarries in the Atsimo Andrefana region, implemented in the context of the ILO/IPEC TACKLE project. While taking due note of the measures taken by the Government to combat child labour, the Committee observes that the Government has not provided any information on the impact of the measures adopted on the progressive elimination of child labour. The Committee notes that the Committee on the Rights of the Child, in its concluding observations of 8 March 2012 (CRC/C/MDG/CO/3–4, paragraph 59), while noting that Madagascar has adopted programmes and policies to combat child labour, also notes with concern the lack of information on any investigations and prosecution of persons responsible for child labour. The Committee of Experts is therefore bound once again to express its *deep concern* at the considerable number of children under the minimum age obliged to work, as well as the conditions under which these children are exploited. ***The Committee firmly requests the Government to redouble its efforts to combat child labour and urges it to provide information on the results achieved for the implementation of the PNA and other programmes of action in terms of the progressive abolition of child labour.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that, according to a document published by the UNESCO International Bureau of Education, the age of completion of compulsory schooling is lower than the minimum age for admission to employment or work. The Committee observed that, according to this document, the official age of access to primary education is 6 years and the duration of compulsory schooling is five years, meaning that the age of completion of compulsory schooling is 11. The Committee noted the Government's indications that it is fully aware of the importance of compulsory schooling as a means of combating child labour. The Government indicated that several meetings had been held on this subject with a view to giving the issue of national education the importance that it deserves, but that much remains to be done, particularly in light of the political crisis affecting the country. The Committee noted the CGSTM's allegation that no changes had yet been made by the Government to resolve the problem of the difference between the age of completion of compulsory schooling (11 years) and the minimum age for admission to employment or work (15 years).

The Committee notes the Government's indication that the Ministry of Education is currently pursuing its efforts so as to be able to take measures to resolve the gap between the minimum age for admission to employment or work and the age of completion of compulsory schooling. The Committee reminds the Government that compulsory schooling is one of the most effective means of combating child labour and emphasizes how necessary it is to link the age for admission to employment or work with the age at which compulsory education ends, as envisaged in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). The Committee observes that if compulsory schooling ends before young persons are legally authorized to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (see the General Survey of 2012 on the fundamental Conventions concerning rights at work, paragraph 371). ***The Committee therefore once again expresses the firm hope that the Government will take measures to raise the age of completion of compulsory schooling so that it coincides with the age of admission to employment or work in Madagascar. It requests the Government to provide information on the progress achieved in this respect.***

*Article 6. Vocational training and apprenticeship.* In its previous comments, the Committee noted the Government's indication that a decree determining the conditions of work with respect to vocational training and apprenticeships would be examined by the National Labour Council (CNT), which is a tripartite body. It also noted the Government's indication that the Ministry of Employment and Vocational Training was preparing various regulations on vocational training which were to be examined in 2006. The Committee also noted that the Ministry of Employment and Vocational Training was planning to submit to Parliament a Bill on the national employment policy, in which further vocational training and apprenticeships were a priority objective. The Committee noted the Government's indications that the draft legislative texts on vocational training and apprenticeship had been examined by the CNT, but that, in view of the political crisis and the closure of many enterprises, the CNT was not yet in a position to take final decisions and that several of its members want to re-examine the issue once the crisis is over.

The Committee notes the Government's indication that it recognizes the current blockage in Madagascar since the crisis and that full information on progress relating to the legislation on vocational training and apprenticeship will be provided in due time. ***The Committee once again firmly encourages the Government to intensify its efforts and to take the necessary measures to ensure that the draft texts on apprenticeship and vocational training are adopted in the very near future. It once again requests the Government to provide copies of these texts once they have been adopted.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the communication of the General Confederation of Workers' Unions of Madagascar (CGSTM) of 27 August 2012, and the Government's report.

*Articles 3(a) and (b) and 7(1) of the Convention. Worst forms of child labour. All forms of slavery or practices similar to slavery, use, procuring or offering of a child for prostitution, and sanctions. Sale and trafficking and the sexual exploitation of children.* In its previous comments, the Committee noted that section 15 of Decree No. 2007-563 of 3 July 2007 concerning child labour (Decree No. 2007-563) prohibits all forms of forced or compulsory labour, including the sale and trafficking of young persons under 18 years of age. The Committee also noted that section 13 of Decree No. 2007-563 categorically prohibits the procuring, use, offering and employment of children of either sex for prostitution. The Committee noted that section 261 of the Labour Code and sections 334, 335 and 354–357 of the Penal Code, to which reference is made in Decree No. 2007-563, establish effective and dissuasive sanctions prohibiting, among other offences, the sale and trafficking of children and the procuring or offering of a child for prostitution.

The Committee notes the adoption of Act No. 2007-038 of 14 January 2008 amending and supplementing certain provisions of the Penal Code to combat trafficking in persons and sex tourism. Under the terms of section 5 of the Act, a section 331bis has now been inserted into the Penal Code and prohibits the debauchery, corruption or prostitution of children of either sex. Section 6 of the Act inserts sections 33ter, quarter and quinto, containing detailed provisions prohibiting all forms of trafficking of children under 18 years of age for exploitation, as well as the sale of children for any purpose, including sexual exploitation, forced labour, slavery or practices similar to slavery. Act No. 2007-038 also establishes effective and dissuasive sanctions for the engagement, abduction or deception of a person with a view to their engagement in prostitution, sexual exploitation or sex tourism.

However, the Committee notes that, while recognizing that Madagascar has adopted relevant legislative provisions to prevent and prohibit sexual exploitation, the Committee on the Rights of the Child (CRC), in its concluding observations of 8 March 2012 (CRC/C/MDG/CO/3-4, paragraphs 61–63), notes with serious concern that child prostitution and sex tourism are on the rise in the country, with orphans being particularly vulnerable. Referring to the State party report (CRC/C/MDG/3-4, paragraph 787), the Committee on the Rights of the Child notes that a quarter of children aged 6–17 years who were working in Antsiranana in 2006 were victims of sexual exploitation and expresses concern at the low number of investigations into and prosecutions for child prostitution. The CRC is also greatly concerned at the high level of trafficking in persons, including children, from Madagascar to neighbouring countries and the Middle East for purposes of domestic servitude and sexual exploitation. While noting the adoption of Act No. 2007-038 of 2008, the CRC expresses concern that the law is not sufficiently implemented and, in particular, has not resulted in any convictions to date.

The Committee recalls that, under the terms of *Article 7(1)* of the Convention, the Government shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to 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 sanctions against persons found guilty of trafficking in children under 18 years of age or their use, procuring or offering for sexual exploitation, are applied in practice. The Committee also requests the Government to provide statistical data on the number and nature of the violations reported, investigations, prosecutions, convictions and the penal sanctions applied.***

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Street children.* In its previous comments, the Committee noted the Government's indication that the Ministry of Labour and Social Legislation (MTLS) was continuing its programme of school attendance and training for street children in the context of the Public Investment Programme for Social Action (PIP). It noted that the action of the PIP was extended to the regional level, under the direction of the labour and social legislation services in each region, and that the "Manjary Soa" centre, financed by the PIP, supports child victims of labour, and particularly of the worst forms of child labour, and offers them remedial teaching or vocational training. The Committee noted the CGSTM's allegation that the number of street children has increased in recent years. The CGSTM added that the action taken by the Government to help them was still minimal. In reply, the Government indicated that the programmes financed in the context of the PIP aim to remove 40 children a year from the worst forms of child labour, or 120 children over three years.

The Committee notes the Government's indication that the political and economic crisis currently faced by Madagascar has resulted in the loss of many jobs and the impoverishment of households, contributing to an increase in the number of children compelled to work. The Government adds that, in the context of the PIP, it is continuing to implement programmes for the social reintegration of victims of the worst forms of child labour, but that the crisis has had a direct effect on the financing of these programmes by the State. The Government, nevertheless, indicates that in 2012 the programme is providing support for 40 children engaged in the worst forms of child labour, such as prostitution, hazardous types of work and domestic work. ***While noting the measures taken by the Government, the Committee is bound to express its concern at the fact that the number of street children has recently increased and that the 2009 crisis appears to be affecting the implementation of PIP programmes and it, therefore, requests the Government to intensify its efforts to ensure that street children are protected from the worst forms of child labour, and are provided***

*with support for their rehabilitation and social integration. It once again requests the Government to provide information in its next report on the results achieved in this respect.*

*Parts IV and V of the report form. Application of the Convention in practice.* The Committee noted previously that, according to the National Survey on Child Labour (ENTE) of 2007, conducted by the National Statistical Institute in collaboration with ILO/IPEC/SIMPOC, more than one in four Malagasy children aged between 5 and 17 years (28 per cent) are economically active, or 1,870,000 children. The participation rate of children between the ages of 15 and 17 years in economic activities is 55 per cent, which may partly be explained by the fact that schooling is no longer compulsory for this age group. Furthermore, the majority of economically active children (82 per cent) are engaged in harmful work. In total, nearly 1,534,000 children are engaged in such activities. Among children aged 15 and over, approximately one economically active child out of two (49 per cent), or 328,000 children, are engaged in harmful work, that is in one of the worst forms of child labour. The ENTE also indicates that in Madagascar 23 per cent of economically active children between the ages of 5 and 17 years are engaged in hazardous types of work, or 438,000 children. The agricultural, stock-raising and fishing sectors account for most harmful types of work performed by children, in both rural and urban areas (88 and 72 per cent, respectively). In contrast with rural areas, child labour in urban areas is characterized by the importance of domestic work (11 per cent) and work in commerce and catering (10 per cent). Girls are often engaged in domestic work (17 per cent of girls between the ages of 15 and 17 years, compared with 9 per cent of boys in the same age group), or an activity in the commerce and catering sectors (5 and 7 per cent of girls aged between 10 and 14 and between 15 and 17 years of age, respectively).

The Committee previously noted the CGSTM's allegations that the political and economic crisis in Madagascar resulted in even more under-age children entering labour and employment. With regard to the worst forms of child labour, the most affected sectors are mining, agriculture and manufacturing. The CGSTM indicated that children work in mines (Llakaka) and in stone quarries under precarious and sometimes dangerous conditions. Furthermore, the worst forms of child labour exist in the informal economy and in rural areas, which are not covered by the labour administration.

The Committee notes the CGSTM's recent indication that it reiterates the allegations made in its previous communication.

The Committee notes the Government's indications that the second phase of the National Plan of Action to Combat Child Labour in Madagascar (PNA) is intended, inter alia, to improve legal frameworks, step up awareness-raising campaigns, mobilize funds to extend action against child labour and the worst forms of child labour, and update databases on child labour as the campaign advances to combat child labour. *While noting the measures taken by the Government to combat child labour and the worst forms of child labour in the context of the PNA, the Committee is bound to express its concern at the situation and number of children under 18 years of age forced to undertake hazardous work, and it urges the Government to intensify its efforts to eliminate these worst forms of child labour. It requests the Government to continue providing information on any progress achieved in this respect and on the results achieved. The Committee also requests the Government to continue to provide information on the worst forms of child labour including, for example, studies and inquiries on the subject and 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 penal sanctions applied. To the extent possible, all information provided should be disaggregated by age and sex.*

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

## Malawi

### **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 and Part V of the report form. National policy and practical application of the Convention.* In its previous comments, the Committee noted that, while many measures were being implemented by the Government to combat child labour through the ILO-IPEC project "Support to the National Action Plan to Combat Child Labour in Malawi", the Government was moving slowly in the final adoption of the national policy and National Action Programme (NAP), even though these had been adopted at ministerial level. The Committee also noted that the Malawi Multiple Indicator Cluster Survey of 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 takes due note of the Government's information that its National Child Labour Policy was finalized and that it has launched the NAP on Child Labour for Malawi (2010–16), in which the responsibilities of all stakeholders in the fight against child labour are well articulated. The priorities of the NAP include developing and improving the policy and legislative framework; building the capacity of the education sector; creating awareness and bridging the information gap on child labour; and building the institutional and technical capacity of service providers. Considering that the last comprehensive survey on child labour in Malawi was undertaken in 2002 and that no follow-up survey was done, it is also envisaged to conduct a national child labour survey and regularly update national child labour statistics in order to determine their trends and prevalence. *Expressing its concern at the considerable number of children under 14 who are engaged in economic activity in Malawi, the Committee 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 the country. The Committee also requests the Government to supply information on the implementation of the NAP on Child Labour, and on the results achieved in terms of the progressive abolition of child*

*labour. Lastly, the Committee requests the Government to provide a copy of the results of the national child labour 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. The Committee therefore drew the Government's attention to possibilities 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. Indeed, the Committee had noted that the Committee on the Rights of the Child, in its concluding observations of 27 March 2009, expressed concern that many children between 15 and 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). In this regard, the Committee had noted that 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, had been finalized technically and was awaiting Cabinet approval (prior to submission to Parliament). Nonetheless, the Government had indicated that it has a considerable backlog of legislation to deal with.

The Committee observes that, within the framework of the NAP on Child Labour in Malawi, it is envisaged to vigorously promote the Tenancy Labour Bill for enactment. In this regard, the Government indicates that the forthcoming parliamentary sitting will likely discuss the Bill and adopt it, at which point a copy of the Tenancy Labour Act will be forwarded to the Committee. ***The Committee once again 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 at the next parliamentary sitting. It expresses the firm hope 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, and requests the Government to provide information on the progress made in this regard along with its next report.***

*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 notes that the Government provides no information on that point in its report. Yet, according to the NAP on Child Labour, inconsistencies among various pieces of legislation relating to children, including the Constitution, remain an issue. ***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 once again urges the Government to take the necessary measures, within the framework of the NAP on Child Labour or otherwise, 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.* Following its previous comments, the Committee notes the Government's information that a List of Hazardous Work for children has been finalized and that it is currently being processed for gazetting. ***Observing that the Government has been referring to the List of Hazardous Work since 2006, the Committee 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 also 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 noted the Government's information that the draft model register would be finalized before the end of the year, and that this draft will be submitted to the Tripartite Labour Advisory Council for adoption.

The Government indicates that the modern register of employment will be in conformity with *Article 9(3)* of the Convention and will be submitted to the Committee as soon as it is produced. In this regard, the Committee once again 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. ***Observing that the Government has been referring to the model register of employment since 2006, the Committee urges the Government to take the necessary measures to ensure its elaboration and adoption without delay. It once again requests the Government to supply a copy of the model register 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.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)**

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

*Articles 3 and 7 of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee noted that, although various penal provisions relate to the offences of abduction and trafficking, these provisions are not comprehensive. However, the Committee noted that the Child Care, Protection and Justice Bill, which was adopted on 28 June 2010, contains a definition of child trafficking and imposes a penalty of life imprisonment for convicted traffickers, and expressed the firm hope that the adopted version of the Child Care, Protection and Justice Bill prohibits the sale and trafficking (both internal and cross-border) of all persons under 18 years of age for the purposes of labour and sexual exploitation.

The Committee notes that section 179(1) of the Child Care, Protection and Justice Act provides that a person who takes part in any transaction involving child trafficking is liable to life imprisonment. According to section 179(2), child trafficking means the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation. The Committee observes, however, that according to section 2(d) of the same Act, a “child” means a person below the age of 16 years. The Committee reminds the Government that by virtue of Article 3(a) of the Convention, Member States are required to prohibit the sale and trafficking of all children under 18 years of age. **The Committee accordingly urges the Government to take immediate measures to ensure that the Child Care, Protection and Justice Act is amended to extend the prohibition of sale and trafficking to cover all children under the age of 18, as a matter of urgency. The Committee also requests the Government to provide information on the application in practice of this Act, including in particular, statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions imposed.**

*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 observed that the use, procuring or offering of young persons under 18 years of age for prostitution, for the production of pornography or for pornographic performances existed in Malawi and that national legislation did not appear to prohibit these worst forms of child labour. The Committee noted the Government’s statement in its report to the Committee on the Rights of the Child (CRC) of 17 July 2008, that, while there are no data available on the number of children involved in sexual exploitation, including prostitution and pornography, these are recognized problems in the country (CRC/C/MWI/2, paragraph 323). However, the Committee noted the Government’s indication that it endeavoured to include such a prohibition in the ongoing review of labour laws, including the Employment (Amendment) Bill, which was going through a final round of examination prior to submission to the Ministry of Justice.

The Committee notes that the Government’s report contains no new information on the adoption of the Employment (Amendment) Bill. It notes, however, the Government’s statement that the Child Care, Protection and Justice Act prohibits the procuring or offering of boys and girls under the age of 16 years for the purpose of prostitution, for the production of pornography or for pornographic performances. In this regard, the Committee observes that section 84(1)(d) only provides that a social welfare officer who has reasonable grounds to believe that a child is being used for the purposes of prostitution or immoral practices may remove and temporarily place the child in a place of safety.

The Committee reminds the Government that Article 3(b) of the Convention requires Member States to prohibit the use, procuring or offering of a child under 18 years for prostitution, for the production of pornography or for pornographic performances. The Committee once again expresses its deep concern at the continued lack of regulation to prohibit the commercial sexual exploitation of children, and once again draws the Government’s attention to its obligation under Article 1 to take immediate measures to prohibit the worst forms of child labour. **The Committee accordingly urges the Government to take the necessary measures, as a matter of urgency, to ensure the adoption of national legislation prohibiting the use, procuring or offering of both boys and girls under 18 years of age, for the purpose of prostitution, for the production of pornography or for pornographic performances, and to include sufficiently effective and dissuasive sanctions in this legislation. It requests the Government to provide information on the progress made in this regard.**

*Article 4(1). Determination of types of hazardous work.* Following its previous comments, the Committee notes the Government’s information that a list of hazardous work for children is in the process of being finalized. **Observing that the Government has been referring to the List of Hazardous Work since 2006, the Committee urges the Government to take the necessary measures to ensure that the draft list of types of hazardous work is adopted as a matter of urgency. It requests the Government to provide a copy of this list as soon as 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 providing assistance for the removal of children from these types of work and for their rehabilitation and social integration. Children engaged in hazardous work in commercial agriculture, particularly tobacco estates.* In its previous comments, the Committee noted that, according to the summary outline for the ILO–IPEC Action Programme of 2007, entitled “Mzimba Project on Elimination of Child Labour”, there were 734,845 child labourers working in the agricultural sector in Malawi, out of which 288,341 were working in hazardous occupations. It also noted 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 noted that ILO–IPEC was implementing several action programmes in the tobacco sector, which sought to withdraw children from hazardous work and reintegrate these children into formal and non-formal educational programmes, as well as to raise awareness about child labour in agriculture.

The Committee notes the Government’s information that labour inspections have been undertaken in the tobacco sector, to help withdraw children from this sector, to rehabilitate and then to send them back to school. It further notes that, within the framework of the National Action Plan (NAP) on Child Labour, it is envisaged to improve awareness of child labour at all levels; prevent and withdraw children from such labour; and provide these children with educational opportunities. In this regard, the NAP on Child Labour indicates that the agricultural sector, including tobacco plantations and family farms, constitutes one of its sectoral priorities, as it accounts for 53 per cent of child labour in the country. **The Committee urges the Government to strengthen its efforts to protect children from hazardous work in the tobacco sector through measures taken within the framework of the NAP on Child Labour. In this regard, it requests the Government to provide concrete information on the number of children who have been thus prevented or withdrawn from engaging in this type of hazardous work, and then rehabilitated and socially integrated.**

*Clause (e). Special situation of girls.* The Committee previously noted that, according to the Malawi child labour survey of 2002, all the child victims of commercial sexual exploitation were girls. Half of these girls had lost both of their parents, while 65 per cent of them did not attend school past the second year. The Committee also noted that the Committee on the Elimination of Discrimination against Women, in its concluding observations of 5 February 2010, expressed concern at the extent to which women and girls are involved in sexual exploitation, including prostitution, and the limited statistical data regarding these issues (CEDAW/C/MWI/CO/6, paragraph 24). It therefore requested the Government to provide information on the measures taken to protect girls under the age of 18 from commercial sexual exploitation.

The Committee notes with regret that the Government provides no information on this point in its report. **It therefore urges the Government to strengthen its efforts to prevent girls under the age of 18 from becoming victims of commercial sexual exploitation, and to remove and rehabilitate victims of this worst form of child labour, within the framework of the NAP on Child Labour or otherwise. It once again requests the Government to provide information on the concrete measures taken in this regard, as well as information on the impact of these measures. To the extent possible, all information provided should be disaggregated by age and sex.**

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

### Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

*Article 3(1) and (2) of the Convention. Minimum age for admission to, and determination of, hazardous work.* In its previous comments, the Committee noted with satisfaction that, pursuant to section 2(1) of the Children and Young Persons (Employment) Act of 1966 (CYP Act), after amendment by the Children and Young Persons (Employment) (Amendment) Act of 2010 (CYP Amendment Act), no child or young person (i.e. all persons under 18 years) shall be required or permitted to engage in any hazardous employment. The Committee also noted that the CYP Act has been amended to include section 2(6) which states that, for the purpose of section 2, “hazardous work” means any work that has been classified as hazardous based on the risk assessment conducted by a competent authority on safety and health as determined by the Minister. The Committee requested the Government to provide information on the measures taken, pursuant to section 2(6) of the CYP Act (as amended), to determine the types of work which constitute hazardous work prohibited to persons under the age of 18.

The Committee notes the Government’s indication that, taking due note of its request, the Labour Department will further discuss the issue and hold consultations with the relevant authorities, such as the Department of Safety and Health, in order to determine the types of work which constitute hazardous work prohibited to persons under the age of 18. *The Committee requests the Government to take the necessary measures to ensure that the hazardous types of work prohibited to children under 18 years of age are determined in the near future, in consultation with the organizations of employers and workers concerned. It requests the Government to provide information on the progress made in this regard in its next report.*

*Article 7(1). Minimum age for admission to light work.* The Committee previously noted that section 2(2)(a) of the CYP Act allows children to be employed in light work which is adequate to their capacity, in any undertaking carried on by their family, but observed that no minimum age for admission to light work had been specified. The Committee recalled that *Article 7(1)* of the Convention provides for the possibility of admitting young persons to light work activities only from the age of 13 years.

The Committee notes the Government’s indication that it has taken note of the Committee’s recommendation to establish a minimum age of 13 years for admission to light work, which would be taken into consideration during the current review of the CYP Act. *The Committee requests the Government to provide information on the progress made in this regard in its next report.*

*Parts III and V of the report form. Application of the Convention in practice.* The Committee previously noted that the Committee on the Rights of the Child, in its concluding observations of 25 June 2007, expressed concern that the enforcement of Convention No. 138 remained weak (CRC/C/MYS/CO/1, paragraph 90). It also noted that the CRC expressed its regret at the lack of a national data collection system and at the insufficient data on working children. However, the Committee noted the indication of the Government representative at the Conference Committee on the Application of Standards that the Malaysia peninsula alone has 300 labour inspectors, with every labour inspector carrying out between 25 and 30 inspections per month. The Government representative also indicated that, out of 30,084 complaints received on various labour issues, none of these cases related to child labour. Nonetheless, the Committee noted that the Worker members at the Conference Committee on the Application of Standards indicated that issues remained, particularly with regard to children working on palm oil plantations, in the agricultural sector, and also with regard to children working in towns and cities.

Moreover, the Committee noted the statement in the report of the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the Trade Policies of Malaysia of 18 and 20 January 2010, entitled “Internationally recognized core labour standards in Malaysia”, that child labour in Malaysia can be found primarily in rural areas in agriculture, where children often work along with their parents without receiving a salary. In urban areas, children work in restaurants, shops and small manufacturing units usually owned by family members. The ITUC further indicated in this report that the Government does not collect statistical data on child labour. The Committee noted the Government’s statement that the Labour Department (under the Ministry of Human Resources) is taking the necessary measures to ensure that data on working children are collected. The Government indicated that it would like to consider engaging the technical assistance of the ILO to facilitate this data collection. Moreover, the Committee noted the Government’s indication in its report submitted under the Labour Inspection Convention, 1947 (No. 81), that labour departments have been engaged in consultations with the police and the Immigration Department in respect of the employment of child workers, including on awareness raising among employers on child labour and the related legislation.

The Committee notes the Government’s indication in its report that data on child employment were previously collected through data entry in the Annual Employment Return/National Employment Return (NER) survey, but that since 2005 the NER survey does not include statistics disaggregated by age. The Government indicates that further discussion

regarding data collection on the work of children and young persons will be taken into serious consideration, in line with support from the Institute of Labour Market Information Analysis and from the Information Management Division of the Ministry of Labour. The Government also indicates that it will work on data sharing with other agencies.

Furthermore, the Committee notes the Government's indication that it is in the midst of recruiting more labour officers in order to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children carrying out economic activities in the agricultural sector. In terms of capacity building, the Government indicates that it has an ongoing programme on training officers, in the framework of which more emphasis will be given to labour inspection in the agricultural sector. ***Taking due note of the efforts deployed by the Government, the Committee encourages it to pursue its efforts to ensure that up-to-date statistical data on the economic activities of children and young persons are collected and made available, including the number of children working under the minimum age of 15, and to provide this information in its next report. To the extent possible, this information should be disaggregated by sex and age. In addition, the Committee requests the Government to continue its efforts to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children carrying out economic activities in the agricultural sector, and to provide information on the results achieved. In this regard, the Committee requests the Government to provide information on the increased number of labour inspectors and on the training they received regarding children carrying out economic activities in the agricultural sector.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*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 requested the Government to take measures to ensure that measures were adopted to 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 the Government's statement that the provisions in the Child Act prohibit the use, procuring or offering of a child for pornographic performances. In this regard, the Committee notes the Government's statement that section 31(1)(b) of the Child Act of 2001 states that any person with the care of a child who sexually abuses the child or causes or permits him to be so abused, commits an offence and shall on conviction be liable to a fine not exceeding 20,000 Malaysian ringgit (MYR) or to imprisonment for a term not exceeding ten years, or to both. In this connection, the Committee notes that section 17(2)(c)(i) of the Child Act specifies that a child has been sexually abused if the child has taken part in any activity which is sexual in nature for the purposes of any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance. ***The Committee requests the Government to indicate if the prohibitions contained in sections 31(1)(b) and 17(2)(c)(i) of the Child Act also apply to persons not having the care of a child.***

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee previously noted that section 32 of the Child Act of 2001 punishes anyone who causes or procures or allows any person under 18 years of age to be on any street, premises or place for the purposes of "carrying out illegal hawking, illegal lotteries or gambling, or other illegal activities detrimental to the health or welfare of the child". The Committee also noted the Government's indication that the "other illegal activities detrimental to the health or welfare of the child" included the use, procuring and offering of a child for illicit activities, including the production and trafficking of drugs. The Committee requested information on the application in practice of section 32 of the Child Act.

The Committee notes the Government's statement that, to date, nobody has been charged under section 32 of the Child Act. The Government also refers to the Dangerous Drugs Act, 1952 (Act No. 234), section 39B(1) of which provides that any person, who, on his own behalf or on behalf of another person, traffics, offers to traffic or prepares to traffic a dangerous drugs shall be guilty of an offence and shall be punished upon conviction with death. The Government indicates that both of the offences under the Child Act and the Dangerous Drugs Act can be tried together. The Government indicates that while children have been convicted under section 39B of the Dangerous Drugs Act, no death sentence has been applied to these children. The Committee, therefore, observes that, although children have been convicted of drug trafficking (under the Dangerous Drugs Act), it does not appear that any adult has been charged with the use, procuring or offering of a child for this offence under section 32 of the Child Act. ***In this regard, the Committee recalls that children used by adults for the production and trafficking of drugs should be treated as victims, rather than offenders, and requests the Government to take measures to ensure that such children receive the services necessary for their rehabilitation and social reintegration. The Committee also requests the Government to strengthen its efforts to ensure that the prohibition on involving children in the trafficking of drugs is strictly enforced, and that any adult who uses, procures, or offers a child for this offence is punished with sufficiently effective and dissuasive penalties.***

*Clause (d). Hazardous work.* In its previous comments, the Committee noted that the relevant legislation did not contain any provisions prohibiting young people under 18 years of age from being engaged in hazardous types of work. The Committee urged the Government to take immediate measures to ensure that the prohibition of hazardous types of work applied to persons under 18 years of age, in accordance with *Article 3(d)* of the Convention.

The Committee notes that the Children and Young Persons (Employment) (Amendment) Act of 2010 (CYP Amendment Act) was adopted and has been in force since 1 March 2011. The Committee notes with *satisfaction* that, pursuant to the CYP Amendment Act, the term "child" is now defined in the CYP Act as a person under 15 years of age



and the term “young person” is defined as a person between 15 and 18 years of age (pursuant to section 1A), and that pursuant to section 2(1) of the CYP Act, no child or young person shall be required or permitted to engage in any hazardous employment. Moreover, pursuant to section 2(4), no child or young person may be engaged in work that is dangerous to life, limb, health, safety and morals. The Committee also notes that section 2(5) of the CYP Act has been amended to state that no child or young person may be engaged in work underground, or in any employment contrary to the provisions of the Factories and Machinery Act, the Occupational Safety and Health Act of 1994 or the Electricity Supply Act of 1990.

*Article 4(1). Determination of types of hazardous work.* The Committee previously expressed the hope that the determination of types of hazardous work to be prohibited to persons below 18 years of age would be reviewed and adopted, pursuant to *Article 4(1)* of the Convention.

The Committee notes that, pursuant to the CYP Amendment Act, the CYP Act has been amended to include section 2(6), which states that for the purpose of section 2, “hazardous work” means any work that has been classified as hazardous based on the risk assessment conducted by a competent authority on safety and health as determined by the minister. ***The Committee requests the Government to take the necessary measures, pursuant to section 2(6) of the CYP Act (as amended), to determine the types of work which constitute hazardous work prohibited to persons under the age of 18, following consultations with the organizations of employers and workers concerned.***

*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. Child victims of trafficking.* The Committee previously noted that Malaysia was considered primarily a destination country for victims of trafficking, and that while most of the victims of trafficking were women over 18 years of age, a number of girls between 14 and 17 years of age were also reported to be victims.

The Committee notes the information in the Government’s report that the Malaysian Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants has developed an action plan to combat the trafficking of children. The Government further indicates that, as of 22 June 2011, there had been 161 child victims of trafficking rescued under a protection order, and 106 children were placed at the Government Shelter Home. ***The Committee requests the Government to provide information on the measures taken within the framework of the action plan to combat trafficking of children to provide for the removal, rehabilitation and social integration of child victims of trafficking. It also requests the Government to continue to provide information on the number of child victims of trafficking rescued and placed in the Government Shelter Home, as well as information on the services provided to these children for their rehabilitation and social reintegration, and where appropriate, their repatriation and family reunification.***

*Article 8. International cooperation and assistance. Regional cooperation.* The Committee previously noted the proposal for a Memorandum of Understanding (MoU) between Malaysia and Thailand to monitor trafficking and address the flow of young girls into Malaysia. The Committee also noted the statement in the Government’s report of 19 November 2008 to the Human Rights Council for the Universal Periodic Review that due to Malaysia’s porous borders, the influx of migrants, trafficked victims and refugees is increasing despite pledges by source States that they have taken progressive measures (A/HRC/WG.6/4/MYS/1/Rev.1, paragraph 94).

The Committee notes the Government’s statement that it has not yet finalized the draft of the MoU with Thailand. However, the Government indicates that currently, enforcement agencies exchange information to strengthen security between the two countries. The Committee also notes the information in the Government’s report submitted under the Forced Labour Convention, 1930 (No. 29), that one of the main goals of the National Action Plan on Trafficking in Persons (2010–15) is the development of local and international partnerships to combat trafficking in persons. ***The Committee urges the Government to pursue its efforts, including through the National Action Plan on Trafficking in Persons (2010–15), to cooperate with the neighbouring countries, particularly Indonesia and Thailand, with a view to eliminating child trafficking for labour and commercial sexual exploitation as well as the involvement of child migrants in the worst forms of child labour.***

*Part V of the report form. Application of the Convention in practice.* Following its previous comments, the Committee notes the information in the Government’s report submitted under Convention No. 29 that as of May 2011, 25 persons had been charged with trafficking in children (under section 14 of the Anti-Trafficking in Persons Act of 2007). The Committee also notes the Government’s statement that between 28 February 2008 to 19 June 2011, 217 cases of sexual exploitation were recorded by the Royal Malaysian Police. The Committee observes that the Government does not indicate how many of these cases involved commercial sexual exploitation, or how many of the victims were under the age of 18. ***The Committee, therefore, requests the Government to provide information on the number of cases of commercial sexual exploitation involving persons under the age of 18 detected by the Royal Malaysian Police. The Committee also requests the Government to continue to provide information on the number of cases of the trafficking of children detected and investigated in Malaysia, as well as statistics on the number of prosecutions, convictions and penalties applied to perpetrators. To the extent possible, all information provided should be disaggregated by sex and by age.***

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

## Mali

### **Minimum Age Convention, 1973 (No. 138) (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:

*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 report of the National Survey on Child Labour (ENTE), conducted in 2005 by the National Directorate of Statistics and Information, in collaboration with the National Directorate of Labour and ILO-IPEC-SIMPOC, around two children out of three between the ages of 5 and 17 years are economically active, or just over 3 million girls and boys throughout the country. Of these, nearly 2.4 million children between the ages of 5 and 14, or 65.4 per cent of children between 5 and 14 years of age, are engaged in work. This phenomenon affects both girls and boys, in rural areas and in towns. The Committee noted that the phenomenon is more widespread in rural areas (68 per cent of 5–14 year olds) than in urban areas (59 per cent of 5–14 year olds). The Committee also noted that in 2006 Mali launched a **Time-bound Programme (TBP)** on the worst forms of child labour in collaboration with ILO-IPEC. The Committee further noted that, in the framework of the **TBP**, a programme of action was launched in 2009 for the preparation and design of the National Plan of Action for the Elimination of Child Labour in Mali (PANETEM) with a view to reinforcing the progress achieved over more than a decade of combating child labour and addressing the difficulties encountered.

The Committee takes due note of the technical validation of the PANETEM at the national level in April 2010 and its adoption by the Council of Ministers on 8 June 2011. The PANETEM covers a period of ten years divided into two phases: the first five-year phase (2011–15) focuses on the elimination of the worst forms of child labour (60 per cent of targeted children) and the second five-year phase (2016–20) on the abolition of all forms of unauthorized child labour (40 per cent of the targeted children). However, the Committee notes that, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Government indicates that, in view of the delay in the adoption of the PANETEM, its implementation is envisaged in 2012. **Observing with deep concern that a considerable number of children are engaged in work under the minimum age for admission to employment or work, the Committee strongly encourages the Government to intensify its efforts to combat child labour, and requests it to provide information on the implementation of the PANETEM and on the results achieved in terms of the elimination of child labour.**

*Article 2(1). 1. Scope of application.* In its previous comments, the Committee noted the information provided by the Government to the effect that children under 15 years of age working on their own account could be informed by the labour inspector covering their area of the risks involved in their work and the social security measures to be envisaged in the event of employment accidents. The Committee however noted the Government's indication that no specific measures have been adopted in Mali to allow labour inspectors to target more specifically children under 15 years of age engaged in an economic activity on their own account.

The Committee notes that absence of information in the Government's report on this subject. It once again reminds that Government that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether or not it is based on an employment relationship and whether or not it is paid. **The Committee urges the Government to take measures to ensure that children who are not bound by an employment relationship, such as those working on their own account or in the informal economy, benefit from the protection afforded by the Convention. In this respect, it requests the Government to envisage the possibility of taking measures to adapt and strengthen the labour inspection services with a view to ensuring such protection.**

*2. Minimum age for admission to employment or work.* In its previous comments, the Committee noted that under section 20(b) of the Child Protection Code, all children have the right to be employed *as from 15 years of age*, in accordance with the minimum age specified when ratifying the Convention. It noted, however, that pursuant to section L.187 of the Labour Code, the minimum age for the admission of children to employment in enterprises, even as apprentices, is *14 years*, except with a written waiver issued by the Minister of Labour. The Committee also noted that section D.189-23 of Decree No. 96-178/P-RM of 13 June 1996 issued under the Labour Code lists the loads that *children between the ages of 14 and 17 years* may not carry, drag or push, depending on the type of transport equipment, the weight of the load and the sex of the child. In this respect, the Committee noted the Government's indication that it undertook to take the necessary measures to amend section L.187 of the Labour Code, which will "lead to the raising of the minimum age for admission to employment".

The Committee notes that the Government has not provided any information on this subject in its report. However, it observes that one of the principal aims of the PANETEM is to reinforce the respective legal framework and regulations in relation to combating child labour. In this context, it is envisaged to organize a national workshop for the revision of the Labour Code and its implementing texts with a view to harmonizing them with the legislative provisions for the protection of children. **Expressing the firm hope that the relevant provisions of the Labour Code and of Decree No. 96-178/P-RM of 13 June 1996 will be brought into harmony with the Convention so as to prohibit work by children under 15 years of age, the Committee requests the Government to take measures with a view to finalizing this revision in the very near future. It requests the Government to provide information on the progress achieved in this respect.**

*Article 2(3). Age of completion of compulsory schooling.* The Committee noted previously that Decree No. 314/PGRM of 26 November 1981 regulates school attendance and that the age of completion of compulsory schooling in Mali is 15 years. It noted the information provided by the Government according to which the implementation of phase II of the Sectoral Investment Programme for the Education Sector (PISE) would increase the number of classes and teachers in the poorest regions and improve the access to schooling for thousands of children, particularly in rural areas. The Committee also noted that Mali is one of 11 countries involved in the implementation of the ILO-IPEC project "Tackle child labour through education in 11 countries" (the TACKLE project), the overall objective of which is to contribute to the reduction of poverty in the least developed countries by providing equitable access to primary education and the development of knowledge amongst the most underprivileged members of society. Moreover, an integrated framework to cover the educational needs of the most vulnerable categories of children was being formulated with a view to the integration of these needs into phase III of the PISE. However, the Committee noted that, according to the Education for All Global Monitoring Report of 2008, published by UNESCO under the title *Education for All by 2015: Will we make it?*, although there has been substantial progress in the field of education, Mali is still far from achieving the objective of universal primary education by 2015, and will probably not achieve gender parity by 2015, or 2025. The Committee also noted the low school enrolment rate of children between 13 and 15 years of age, which shows that a

number of children drop out of school before reaching the minimum age for admission to employment and that they enter the labour market.

The Committee notes that the TACKLE project has been extended up to 2013 and that its objective is to strengthen links between educational policies and measures to combat child labour with a view to giving vulnerable children and victims of child labour the opportunity to benefit from training and education. It also notes the Government's indications that the third phase of PISE (PISE III) takes into account children with special educational needs. The Committee observes that, according to the table of data provided by the Government, the net school attendance rate in primary school rose from 56.6 per cent in 2005–06 to 60.9 per cent in 2007–08 and to 62.7 per cent in 2008–09. In secondary education, these rates are 23.5 per cent, 28.8 per cent and 30.7 per cent, respectively.

The Committee takes due note of the measures adopted by the Government in relation to education. However, it notes that the school attendance rates for primary education remain fairly low and that the low rates of school attendance in secondary education, compared with primary education, show that a significant number of children drop out of school after primary school. **Considering that compulsory schooling is one of the most effective means of combating child labour, the Committee strongly encourages the Government to pursue its efforts to improve the functioning of the education system in the country, particularly by increasing school attendance rates. In this respect, it requests the Government to provide information on the progress achieved, particularly through the implementation of the TACKLE project and of PISE III, and the results obtained.**

**Article 3(3). Admission to hazardous types of work from the age of 16 years.** The Committee noted previously that certain provisions of Decree No. 96-178/P-RM of 13 June 1996 allow children to be employed in hazardous types of work from the age of 16 years. It noted the Government's indication that the authorization of the labour inspector, which is required to employ young persons between 16 and 18 years of age, is a guarantee that these types of hazardous work are performed under healthy, safe and moral conditions. The Government indicated that section D.189-33 of Decree No. 96-178/P-RM establishes the requirement to ascertain that young persons between the ages of 16 and 18 years engaged in hazardous types of work have received adequate specific instruction or vocational training in the relevant branch of activity, in accordance with *Article 3(3)* of the Convention. However, the Committee noted that section D.189-33, which refers to the declaration that the employer has to make to the Employment Office for the recruitment of a child, does not make any reference to the instruction or vocational training that has to be followed by a young person over 16 years of age to be able to perform hazardous types of work. **Noting the absence of information in the Government's report on this subject, the Committee once again urges the Government to take measures to ensure compliance with the conditions set out in Article 3(3) of the Convention. It requests the Government to provide information in its next report on any developments in this respect.**

**Article 7. Light work.** In its previous comments, the Committee noted that section 189-35 of Decree No. 96-178/P-RM of 13 June 1996 allows exceptions from the minimum age for admission to employment in the case of boys and girls of at least 12 years of age for domestic work and light work of a seasonal nature. It noted the Government's indication that it undertook to raise the minimum age for domestic work and light work of a seasonal nature from 12 to 13 years. It also noted that a draft order was being prepared to determine light work activities and the conditions for their performance.

The Committee notes that the Government has not provided any further information in its report on this subject. **The Committee urges the Government to take the necessary measures to harmonize the national legislation with the Convention and to regulate the employment of children on light work from the age of 13 years. To this end, it once again hopes that the order respecting light work will be formulated and adopted in the near future.**

**The Committee also urges the Government to renew its efforts and to take the necessary measures to ensure that the revision of the legislation envisaged in the context of the PANETEM does not fail to take into account the Committee's detailed comments on the divergences existing between the national legislation and the Convention, and that amendments will be made 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 reads as follows:

**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, although the Government had taken several measures to combat the sale and trafficking of children for the exploitation of their labour, the trafficking of children still constituted a problem in practice, even though it is prohibited by section 244 of the Penal Code and section 63 of the Child Protection Code. It noted that, in the summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 of 3 April 2008, the International Federation for Human Rights (FIDH) indicated that, even though no statistics are available, Mali is a transit country for the trafficking of women and children, and it therefore recommended that the Malian authorities strictly apply sections 240 et seq. of the Penal Code penalizing the trafficking of children, and that it improve the assistance provided to children who have been victims of trafficking (A/HRC/WG.6/2/MLI/3, paragraphs 13–14). The Committee requested the Government to provide information on the effect given in practice to the provisions respecting the sale and trafficking of children for the exploitation of their labour.

The Committee notes with regret that the Government has not provided any information on this matter in its report. **The Committee therefore urges the Government to take immediate measures to ensure the protection of children under 18 years of age against sale and trafficking and to ensure that thorough investigations and robust prosecutions of offenders are carried out, and that effective and sufficiently dissuasive penalties are imposed. It once again requests the Government to provide information on the effect given in practice to the provisions respecting the sale and trafficking of children for the exploitation of their labour through the provision of statistics on the number of convictions and the penal sanctions imposed.**

**2. Forced or compulsory labour. Begging.** In its previous comments, the Committee noted that, according to the 2006 UNICEF report, talibés children originating from neighbouring countries, including Mali, are found on the streets of Dakar, who have been brought to the city by Koranic teachers (marabouts). These children are kept in conditions of servitude and are obliged to beg daily. The Committee also noted that the 2006 UNICEF report refers to the involvement of marabouts in the trafficking of children for the exploitation of young talibé workers from Burkina Faso in the rice fields of Mali. The Committee noted that the Committee on the Rights of the Child, in its concluding observations of May 2007, expressed concern at the vulnerability of

children living in the streets or who are engaged in begging, particularly to all forms of violence, sexual abuse and exploitation, as well as economic exploitation (CRC/C/MLI/CO/2, paragraph 62). The Committee noted that section 62 of the Child Protection Code defines begging as a sole or main activity of a dehumanizing nature and an obstacle to the rights of the child. It further noted that section 183 of the Penal Code provides that any person inciting a child to beg shall be liable to a sentence of imprisonment of from three months to one year. However, the Committee noted that, in the report of the Working Group on the Universal Periodic Review of Mali of 13 June 2008, the representative of Mali indicated that begging by children in Koranic schools is an infringement of the law (A/HRC/8/50, paragraph 55).

The Committee notes with regret the absence of information on this matter in the Government's report. The Committee once again observes that, although the legislation is in conformity with the Convention on this point, the phenomenon of child talibés remains a cause for concern in practice. The Committee once again expresses serious concern at the use of these children for purely economic purposes. The Committee once again reminds the Government that, under the terms 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 and, in accordance with Article 7(1) of the Convention, it shall 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 sanctions. ***The Committee urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of marabouts who make use of children under 18 years of age for purely economic purposes are carried out and that sufficiently effective and dissuasive sanctions are imposed upon them. In this respect, the Committee requests the Government to take the necessary measures to reinforce the capacities of the law enforcement agencies. It also requests the Government to take effective and time-bound measures to prevent children under 18 years of age from becoming victims of forced or compulsory labour, such as begging, and to identify child talibés who are compelled to beg and remove them from these situations, while ensuring their rehabilitation and social integration.***

*Clause (b). Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that section 229 of the Penal Code, under which inciting a girl or a woman, even with her consent, to debauchery or forcing her to engage in prostitution are punishable offences, applies only to female children. The Committee noted the Government's indication that it undertook to examine the question of bringing its legislation into conformity with the Convention and protecting boys from sexual exploitation, and particularly prostitution. The Government indicated that the measures taken in this respect consist of the adoption of Act No. 01-081 of 24 August 2001 concerning crimes related to minors and the appointment of magistrates to hear cases involving minors (Act No. 01-081). The Committee observed that not only do these provisions fail to prohibit the use, procuring or offering of a child for prostitution, but they also appear to punish the children concerned, making them criminally liable for their involvement in prostitution or illicit activities. The Committee observed that children who are used, procured or offered for prostitution are consequently not treated as victims and receive neither support nor protection.

The Committee notes with regret that the Government has not provided any information on this matter in its report. It once again reminds the Government that, under the terms of Article 3(b) of the Convention, the use, procuring or offering of a child under 18 years of age for prostitution is considered to be one of the worst forms of child labour and that, by virtue of 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 urges the Government to take immediate measures to ensure that the national legislation prohibits the use, procuring or offering of boys under 18 years of age for prostitution.***

*Clause (c). Use, procuring or offering of a child for illicit activities.* The Committee noted previously that Act No. 1986/18 on the punishment of offences involving poisonous substances and narcotics prohibits the cultivation, production, offering and sale of drugs, but not the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Government indicated that the measures taken in this respect consisted of the adoption of Act No. 01-081. However, the Committee observed that these provisions do not prohibit the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.

The Committee notes with regret that the Government has not provided any information on this matter in its report. It once again reminds the Government that, under the terms 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, urges the Government to take immediate measures to ensure that the national legislation prohibits the use, procurement or offering of children under 18 years of age for illicit activities, in particular for the production, offering and sale of drugs. It requests the Government to provide information in its next report on any progress achieved in this respect.***

*Article 5. Monitoring mechanisms. 1. Monitoring committees.* In its previous comments, the Committee noted that local monitoring committees (CLV) to combat child labour had been established in the circles of Kangala, Bougouni, Kolondiéba and Koutiala, that 344 monitoring committees are now operational in Mali and that their principal role was to identify potential victims of child trafficking, and to indicate cases in which children are the victims of trafficking and collect and disseminate data on the trafficking of children. ***Noting the absence of information on this subject in the Government's report, the Committee once again requests the Government to provide information on the number of children who are prevented from becoming victims of trafficking or are removed from trafficking for labour exploitation as a result of the activities of monitoring committees.***

*2. National Committee to follow-up programmes to combat the trafficking of children.* The Committee noted previously the Government's indications that the National Committee to follow-up programmes to combat the trafficking of children in Mali (CNS) is responsible for evaluating the action taken in the context of the implementation of programmes to combat the trafficking of children, for following the implementation of cooperation agreements signed by Mali to combat the trafficking of children and for learning from the experience acquired in this field in taking responsibility for child victims of trafficking. However, the Government indicated that, since it was established in 2006, the CNS was not operational, thereby creating a gap in the coordination of action to combat the trafficking of children in Mali. To overcome this problem, three meetings had been planned between September and November 2009, during which the programme and action of the CNS were to be determined and the annual work plan for 2010 adopted.

The Committee notes that the Government has not provided any information on this subject in its report. ***The Committee once again requests the Government to provide information on the activities carried out by the CNS and their impact on the elimination of the trafficking of children for the exploitation of their labour.***

*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 assistance for their removal from these worst forms of child labour. Sale and trafficking of*

children. In its previous comments, the Committee noted that, in the summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 of 3 April 2008, the FIDH indicated that there are no institutional facilities available in Mali to shelter, offer guidance to or assist young women who have been the victims of trafficking or sexual exploitation (A/HRC/WG.6/2/MLI/3, paragraphs 13–14). It therefore recommended the authorities of Mali to set up care and guidance facilities and to provide assistance for the return of girls who are victims of trafficking.

The Committee notes the Government's indication that one of the strategic focuses of the National Plan of Action for the Elimination of Child Labour in Mali (PANETEM), adopted in 2010, is the implementation of direct action to combat the worst forms of child labour, including trafficking. **The Committee requests the Government to provide information on the measures adopted within the framework of the PANETEM project to prevent children under 18 years of age from becoming victims of sale or trafficking and to remove child victims from this worst form of child labour. It also once again requests the Government to envisage the establishment of care and guidance facilities and the provision of assistance for the return of child victims of trafficking, as recommended by the FIDH, with a view to ensuring their rehabilitation and social integration. The Committee once again requests the Government to provide information on any progress achieved in this regard.**

*Article 8. Regional cooperation.* In its previous comments, the Committee noted that the Government had signed bilateral cooperation agreements on the cross-border trafficking of children with Burkina Faso, Côte d'Ivoire, Guinea and Senegal. It also noted that, in addition to the Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa, signed in July 2005, Mali had also signed the Abuja Multilateral Cooperation Agreement in 2006. It further noted that, in the context of the ILO-IPEC project to combat the trafficking of children, it was planned to reinforce the application of the bilateral and multilateral treaties signed by Mali. However, the Government indicated that, although the countries which signed agreements with Mali met periodically, they were more dynamic in their activities within the national territory than in terms of mutual international assistance. Indeed, the Committee observed that, in the Report of the Working Group on the Universal Periodic Review of Mali of 13 June 2008, the representative of Mali noted that, with regard to trafficking in children, the main difficulties stemmed from the cross-border nature of the phenomenon (A/HRC/8/50, paragraph 54).

The Committee notes the Government's indication that the National Cell to Combat Child Labour (CNLTE) represented the Ministry of Labour at the follow-up meetings to the Cooperation Agreement to Combat Trans-border Child Trafficking between Mali and Burkina Faso, held in Ouagadougou in March 2009, as well as the meeting between Mali and Guinea, held in Bamako in September 2010. However, it observes that the Government has not provided any information on the number of child victims of trafficking for sexual exploitation or for labour who have been protected through the implementation of the multilateral agreements signed by Mali, or on the arrests that have been made as a result of the concerted action of the national border police. **In view of the importance of trans-border trafficking in the country, the Committee urges the Government to take practical and effective measures for the implementation of the multilateral agreements signed in 2005 and 2006, particularly through the establishment of a system for the exchange of information to facilitate the discovery of child trafficking networks and the arrest of persons working in these networks. It also requests the Government to provide information on the outcome of the follow-up meetings held in Ouagadougou in 2009 and Bamako in 2010.**

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.**

## Mauritania

### Minimum Age Convention, 1973 (No. 138) (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 takes note of the communication from the General Confederation of Workers of Mauritania (CGTM) dated 22 August 2011, and of the Government's report.

*Article 1 and Part V of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee had noted the indications of the International Trade Union Confederation (ITUC), according to which the Ministry of Labour authorized, without exception, work by 13-year-old children in both the agricultural and non-agricultural sectors. The Committee had noted that, according to the study undertaken by the Government in 2004 in collaboration with UNICEF, entitled "Child labour in Mauritania", around 90,000 children under 14 years of age worked in the country, signifying an increase of around one third over four years. The study showed that poverty was responsible for child labour.

The Committee notes the allegations of the CGTM that, despite this worrying situation, the Government is not conducting any coherent and concerted policy to redress the situation. There is a department specifically dealing with children's matters, but none of the programmes developed in this department tackle the problem of child labour. Furthermore, the trade union organizations are not involved in these programmes.

The Committee expresses its deep concern at the large number of young children working out of personal necessity in Mauritania. **The Committee urges the Government to take short or medium-term measures to bring about a gradual improvement in this situation, for instance by adopting a national policy aimed at abolishing child labour once and for all, in cooperation with the employers' and workers' associations concerned, and to provide information in this respect. The Committee also asks the Government to provide information on the way in which the Convention is applied in practice, by providing, for example, statistical data disaggregated by sex and age group on the nature, extent and trends of child labour and the employment of young persons working below the minimum age specified by the Government at the time of ratification, as well as extracts from the reports of the inspection services.**

*Article 2(3). Compulsory schooling.* The Committee had previously noted the information provided by the Government to the effect that one of the methods to ensure the abolition of child labour was the adoption of Act No. 2001-054 of 19 July 2001, making basic education compulsory for children of both sexes from 6 to 14 years of age, signifying a minimum duration of schooling of six years. It had also noted that the parents were henceforth required, subject to penalties, to send children aged between 6 and 14 years to school.

The Committee notes the allegations of the CGTM that thousands of school drop-outs contribute greatly to the phenomenon of child labour in Mauritania and that children are often forced to leave school because of pressure from their parents.

The Committee notes that, according to the Government, it is sparing no effort to improve the education system. In this respect the Government states that it is planning to organize a general education meeting (*états généraux de l'éducation*) in the near future. Furthermore, the Government indicates that the capacity of the labour inspections services has been strengthened and that they now have enough human resources to combat child labour effectively. A new labour inspectorate was also set up in 2010, which will help to cut child labour and help children enter economic and social life by providing training and apprenticeship programmes carried out in the formal and informal sectors.

While noting the efforts made by the Government, the Committee notes that, according to 2009 UNICEF statistics, 79 per cent of girls and 74 per cent of boys are in primary school, whereas only 15 per cent of girls and 17 per cent of boys are in secondary school. The Committee expresses once again its concern at the persistence of low school attendance rates, especially at the secondary school level. ***Considering that compulsory schooling is one of the most effective means of combating child labour, the Committee requests the Government to renew its efforts to improve the working of the education system, particularly by increasing the secondary school attendance rate, especially among girls. In this respect, it asks the Government to provide information on the outcome of the general education meeting, as well as on any improvements in the education system it might bring. It also requests the Government to provide information on the number of children working under the minimum age who have been identified by the labour inspection services and integrated into the school system or in apprenticeships or vocational training, on condition that the minimum age requirements are respected.***

*Article 3(3). Authorization to employ children in hazardous work as from the age of 16 years.* In its previous comments, the Committee had noted that section 1 of Order No. 239 of 17 September 1954 (Order No. 239), as amended by Order No. 10.300 of 2 June 1965 respecting child labour (the Child Labour Order), unequivocally provides that "it is prohibited to employ children of either sex under 18 years of age on work that exceeds their strength, involves risks of danger or which, by its nature or the conditions in which it is carried out, is likely to harm their morals". The Committee had nevertheless pointed out that this provision had established the general prohibition of employing young persons under 18 years of age on hazardous types of work, whereas other provisions, such as sections 15, 21, 24, 25, 26, 27 and 32 of Order No. 239 and section 1 of Order No. R-030 of 26 May 1992 (R-030), set forth exceptions to this prohibition for young persons between 16 and 18 years of age. The Committee had requested the Government to provide information on the measures taken to ensure that the performance of hazardous types of work by young persons aged between 16 and 18 was only permitted under strict conditions of protection and prior instruction in conformity with the provisions of *Article 3(3)* of the Convention.

The Committee notes the allegation of the CGTM that children are exploited in dangerous work in large cities, as apprentices, in the bus transport sector, as deliverers of large amounts of goods and as garage workers.

The Committee notes that, according to the Government, labour inspectors and supervisors ensure strict compliance of the provisions of the Orders in question. The Government also states that, if the need exists, measures are taken to guarantee that the performance of hazardous work by young persons between 16 and 18 years of age is only authorized if their health, safety and morals are fully protected and if they have received adequate specific instruction or vocational training in the relevant branch of activity. While taking account of the Government's information, the Committee notes that the national legislation still does not stipulate that the two conditions provided for under *Article 3(3)* of the Convention are a prerequisite for allowing young people aged 16 years and over to perform hazardous work, despite the fact that there seems to be a problem in practice in this respect. ***The Committee therefore requests the Government to take the necessary measures to ensure that Orders Nos 239 and R-030 are amended so as to provide that hazardous types of work by young persons aged 16 to 18 years is only authorized in accordance with the provisions of Article 3(3) of the Convention.***

*Article 7(3). Determination of light work.* In its previous comments, the Committee noted that, under section 154 of the Labour Code regulating the employment of children between 12 and 14 years of age in light work, no child over 12 but under 14 years of age may be employed without the express permission of the Minister of Labour, and only under certain conditions restricting the hours of this employment. The Committee had reminded the Government that *Article 7(3)* provided that, in addition to the hours and conditions of work, the competent authority should determine the activities in which light employment might be permitted for children between 12 and 14 years of age. The Committee had noted the Government's indication that it would take the necessary measures to determine the activities in which light work or employment by children might be authorized.

The Committee notes the Government's indication that a copy of the provisions determining the activities in which light employment or work may be permitted for children will be sent to the Office as soon as they have been adopted. ***Observing that a significant number of children work under the minimum age for admission to employment in Mauritania, the Committee urges the Government to take the necessary measures to bring national legislation into line with the Convention and to regulate the employment of children engaged in light work from the age of 12 years. It expresses the firm hope that light work will be determined by the national legislation in the very near future.***

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.***

### **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:

The Committee notes the communication of 22 August 2011 from the General Confederation of Workers of Mauritania (CGTM), and the Government's report.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery or practices similar to slavery.*  
1. *Sale and trafficking of children.* In its previous comments, the Committee noted the adoption of Act No. 025/2003 of 17 July 2003 to suppress the trafficking of persons. The Committee also noted that, according to a UNICEF report on trafficking in persons with particular reference to women and children in West and Central Africa, in the streets of Dakar there are boy *talibés* from neighbouring countries, including Mauritania, who have been brought to the city by their Koranique masters (*marabouts*). According to the same report, there is also child trafficking inside Mauritania in which *talibé* children from rural

areas beg on the streets of Nouakchott. The Committee observed that Mauritania appeared to be a country of origin for the trafficking of children for the purpose of exploiting their labour.

The Committee notes that in its concluding observations of 17 June 2009, the Committee on the Rights of the Child (CRC) expressed concern at reports of children being sold to work as jockeys in the Middle East (CRC/C/MRT/CO/2, paragraph 77). The CRC was also concerned to note that Mauritania's report contained no information on the extent of the trafficking or the measures taken to prevent such crimes. The Committee notes with regret the lack of information on this subject in the Government's report. **The Committee once again expresses concern at the situation of child victims of trafficking, and requests the Government to step up its efforts to ensure that, in practice, children under 18 years of age are protected against the sale and trafficking of children for the purposes of sexual exploitation or exploitation of their labour. The Committee again requests the Government to provide information on the application of Act No. 025/2003 of 17 July 2003 to suppress the trafficking of persons in practice, including statistics on the number and nature of offences reported, investigations held, prosecutions, convictions and penal sanctions applied.**

2. *Forced or compulsory labour. Begging.* In its previous comments the Committee noted that section 42(1) of Ordinance No. 2005-015 on the protection of children under penal law provides that the act of causing a child to beg or directly employing a child to beg is punishable by imprisonment of one to six months or a fine of 100,000 ouguiyas. The Committee nonetheless noted that a UNICEF study entitled "Child Labour in Mauritania" indicated that, according to a study of July 2003 by the National Children's Council (CNE), observations in the field suggested that street children tended to be beggars who give a daily account of their begging activities to their *marabouts*.

The Committee notes that, according to the CGTM, teachers in religious schools force children onto the streets to beg, exposing them to crime and the danger of assault on their integrity.

The Committee notes that in its concluding observations of 17 June 2009, the CRC expressed concern over the lack of protection for *talibé* children, who are forced by *marabouts* to beg in slavery-like conditions (CRC/C/MRT/CO/2, paragraph 73). The Committee also notes that in her report of 24 August 2010 to the Human Rights Council, the Special Rapporteur on contemporary forms of slavery stated that although she had been informed that the Government was working with religious leaders to put an end to this practice, many did not consider forced begging to be a form of slavery (A/HRC/15/20/Add.2, paragraph 46). The Minister of Families, Children and Social Affairs nonetheless informed the Special Rapporteur of the collaboration between her and the Ministry of the Interior to address the issue of street children, some of whom are *talibés* in Nouakchott. There appears to be a specialized police force which is trained to work with children, and the services of the Minister of the Interior monitor *madrassas* to ensure that children are not encouraged to go begging for their religious teachers (paragraph 75).

The Committee nevertheless notes with regret that the Government provides no information on this matter in its report. It again notes with deep concern that children are being used for purely economic purposes, in other words children are being exploited for their labour by certain *marabouts*. The Committee again points out to the Government that, according to Article 1 of the Convention, 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 and that, in conformity with Article 7(1) of the Convention, the Government must take all necessary steps to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of effective and sufficiently dissuasive sanctions. **The Committee urges the Government to take the necessary measures to ensure that thorough investigations are carried out and completed and that marabouts who use children under 18 years of age for purely economic purposes are effectively prosecuted and punished by effective and sufficiently dissuasive penalties. The Committee requests the Government to provide information on the number of talibé children identified by the special police unit and the services of the Minister of the Interior, and requests it to take the necessary steps to build the capacity of law enforcement bodies.**

Article 7(2). *Effective and time-bound measures. Clause (b). Assistance for the removal of children from the worst forms of child labour. Forced or compulsory labour. Begging.* In its previous comments the Committee noted that, according to information in the second periodic report submitted by Mauritania in July 2008 to the CRC (CRC/C/MRT/2, paragraph 88), a centre for the protection and social integration of children in difficult situations was established which targets street children, children forced to beg or children subject to economic exploitation.

The Committee notes that in her report, the Special Rapporteur on contemporary forms of slavery indicates that the Ministry of the Interior informed her that *talibé* children are offered education or vocational training and provided with shelter (A/HRC/15/20/Add.2, paragraph 75). The Committee nonetheless notes with regret that the Government provides no information on this matter in its report. It also observes that in its concluding observations of 17 June 2009, the CRC likewise expressed concern at the lack of information on the measures adopted by Mauritania to identify and protect children working or living in the street (CRC/C/MRT/CO/2, paragraph 73). **The Committee urges the Government to indicate the number of child victims of begging who have been removed from the street and rehabilitated and integrated into society, particularly by the centre for the protection and social integration of children in difficult situations or by the services of the Ministry of the Interior. The Committee also requests the Government to indicate any other effective time-bound measures taken to prevent children under 18 years of age from falling victim to forced or compulsory labour, such as begging, and to identify talibé children who are forced to beg, and to remove them from such situations, ensuring their rehabilitation and social integration.**

Clause (e). *Special situation of girls. Domestic employees.* In its previous comments the Committee noted the Government's statement that most girls engaged in domestic work received little schooling or no schooling at all. Furthermore, according to the results of a survey on girls in Mauritania which was cited in a UNICEF study entitled "Child Labour in Mauritania", girls could be recruited as from 8 years of age, and 32 per cent of the girls questioned during the survey were under 12 years of age. The Committee noted that according to the second periodic report submitted by Mauritania to the CRC in July 2008 (CRC/C/MRT/2, paragraphs 247 and 255), two surveys had been under way for some time on child labour (including girls in domestic service) in Kiffa and Nouakchott "to determine the possibilities of educating and training these young workers and securing their social reintegration". It noted that the "El Mina Centre for Child Protection" in Nouakchott has been carrying out various activities since 2001 (training, literacy, hygiene, etc.) for girl domestic workers. A basic education pilot programme was also carried out in Dar Naim and a unit for "girls in difficult situations" was established.

The Committee notes that according to the CGTM, domestic work amounts to a daily workload of heavy chores for children, who are subjected to abuse from a very young age. Furthermore, the International Trade Union Confederation (ITUC) indicated in a report it submitted to the General Council of the World Trade Organization for the trade policy reviews of Guinea and Mauritania on 28 and 30 September 2011, many girls are forced into unpaid domestic service and are particularly vulnerable

to exploitation. The Committee also notes that in its concluding observations of 17 June 2009, the CRC expressed particular concern at the situation of girls who work as domestic servants in exploitative slavery-like conditions (CRC/C/MRT/CO/2, paragraph 75).

The Committee notes with regret that the Government provides no information on this matter in its report. It again points out that small girls, particularly those employed as domestic servants, are often the victims of exploitation, which can take many different forms, and that it is difficult to supervise their conditions of employment in view of the clandestine nature of their work. ***It therefore urges the Government to take measures to ensure that children who are victims of exploitation in domestic work, particularly girls, are removed from this worst form of child labour and are rehabilitated and integrated in society, in particular through the activities of the El Mina Centre for the Protection of Children and the Dar Naim pilot project. The Committee requests the Government to provide information on progress made in this regard. Lastly, it urges the Government to provide information on the development and conclusions of the two surveys under way in the country.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes that according to the report of 24 August 2010 of the Special Rapporteur on contemporary forms of slavery, children under 13 years of age work in all sectors of activity in Mauritania. In rural areas, enslaved children usually work taking care of the livestock, cultivating subsistence crops and performing domestic work and other significant labour in support of their masters' activities. Children live in slavery-like conditions in urban areas and are often found working in domestic households (A/HRC/15/20/Add.2, paragraphs 42 to 45). The Committee notes, however, that in its concluding observations of 17 June 2009, the CRC expressed particular concern at the lack of comprehensive documentation on the incidence of child labour and effective measures to ensure that children are protected from economic exploitation and the worst forms of child labour and that they can exercise their right to education (CRC/C/MRT/CO/2, paragraph 75). ***The Committee expresses concern at the situation of children engaged in hazardous work and in slavery-like conditions, and therefore urges the Government to take immediate and effective measures to ensure protection in practice for these children against this worst form of child labour. It also requests the Government to provide statistics of the nature, extent and tendencies of worst forms of child labour, particularly as concerns the sale and trafficking of children begging in the streets. It also requests the Government to provide information on the number and nature of the offences reported, investigations and prosecutions, and convictions and the penal sanctions imposed. 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.

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

## Mexico

### ***Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1956)***

*Article 2(1) of the Convention. Period during which night work is prohibited.* In its previous comments, the Committee repeatedly pointed out that, by defining night work as work performed between 8 p.m. and 6 a.m., i.e. a period of ten hours, section 60 of the Federal Labour Act fails to give effect to *Article 2(1)* of the Convention, which defines "night" as a period of at least 12 consecutive hours.

The Committee notes the Government's indications that, although national legislation does not contain a prohibition for young persons under 18 years of age to work during the night for 12 consecutive hours, the Government has taken measures to regulate night work of minors and sanction any contravention. The Committee notes the Government's reference in this regard to the Federal Regulation on Safety, Health and the Working Environment, of 21 January 1997. Yet the Committee observes that the Regulation in question does not contain any provision on the night work of minors. The Committee furthermore notes that section 175(2) of the Federal Labour Act prohibits night work for young persons under 18 years of age in industrial undertakings and section 995 provides for aggravated sanctions for the non-respect of any of the provisions relating to the protection of minors. As regards application in practice, the Committee notes the Government's indications that the Federal Attorney's office for Labour Defense has not received any cases relating to the subject matter of the Convention. It also notes that the labour inspectorate between 2008 and May 2012 carried out more than 218,000 inspections of workplaces likely to be concerned by the application of the federal labour legislation governing night work and that they found no minors working at night in these enterprises. The Committee also notes the extracts of collective agreements provided by the Government which contain provisions on the night work of women. Yet, like section 60 of the Federal Labour Act, they establish that "night" is the interval between 8 p.m. and 6 a.m., establishing a period of ten consecutive hours during which work by minors is prohibited.

The Committee points out again that section 60 of the Federal Labour Act is not in conformity with *Article 2* of the Convention. In this regard, the Committee reminds the Government that *Article 2* of the Convention lays down that night signifies a period of 12 consecutive hours (*paragraph 1*). For young persons under 16 years of age this period shall include the interval between 10 p.m. and 6 a.m. of the following day (*paragraph 2*), and for young persons between the ages of 16 and 18 years, the interval of at least seven consecutive hours falling between 10 p.m. and 7 a.m. (*paragraph 3*). The Committee notes with ***deep regret*** that, despite the request which it has repeatedly made since 1972, no measures have been taken to give effect to the Convention. ***The Committee therefore again urges the Government to finally take the necessary measures to amend the Federal Labour Act in order to ensure conformity with Article 2 of the Convention.***



## **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 and penalties.* In its previous comments, the Committee noted that the National Centre for Planning, Analysis and Information to Combat Crime (CENAPI) attached to the Office of the Attorney General of the Republic had developed the National System to Combat Trafficking in Persons (SINTRA) with a view to collecting information on human trafficking and other related offences. The Committee also noted the statistics of the Special Prosecutor's Office dealing with violence against women and trafficking in persons (FEVIMTRA) concerning the number of investigations, convictions and penalties imposed. Yet, the Committee expressed concern at the small number of convictions secured for trafficking of children under 18 years of age for their commercial sexual exploitation in view of the extent of the practice in the country and at the allegations of complicity in trafficking on the part of public officials.

The Committee notes with *interest* the adoption of the General Law to Prevent, Punish and Eradicate Crimes relating to Trafficking in Persons and to Protect and Assist the Victims of these Crimes on 14 June 2012, which abrogates the Act of 27 November 2007 concerning the prevention and punishment of trafficking in persons. It notes that the Law criminalizes not only trafficking in children for sexual and labour exploitation, but also the use of children for the production of pornography, begging and in illicit activities. The Committee furthermore notes that section 42(VII) provides that sanctions are increased up to 50 per cent in case the victim is under 18 years of age. The Law also establishes a comprehensive legal and institutional framework to fight against these crimes, which determines the powers, duties and coordination of the various actors involved in the prevention and punishment of such offences and the protection of victims, with specialized care and assistance to victims under 18 years of age.

The Committee notes the statistical information provided by the Government in its report as regards the practical application of the Act concerning the prevention and punishment of trafficking in persons. Between June 2011 and July 2012, only three offences of trafficking of children under 18 years of age were reported in the department of Veracruz. Yet the Committee observes that the information provided by the Government does not specify the number of convictions, how many of these cases concerned the complicity of officials who are complicit in trafficking of minors and the types of sanctions applied.

***The Committee expresses the firm hope that the implementation of the General Law to Prevent, Punish and Eradicate Crimes relating to Trafficking in Persons and to Protect and Assist the Victims of these Crimes on 14 June 2012 will enable the Government to fight more effectively against the sale and trafficking of children and young persons under 18 years. In the context of the implementation of the new Law, the Committee urges the Government to intensify its efforts to ensure the elimination in practice of this worst form of child labour by ensuring that thorough investigations and robust prosecutions are carried out, including of state officials suspected of complicity in such acts, and that sufficiently effective and dissuasive penalties are applied in practice. The Committee requests the Government to provide detailed information in its next report on the application of the new Law in practice by the federal states including the number of reported violations, investigations, prosecutions, convictions and criminal penalties imposed.***

*Article 3(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 noted the development of a federal database of information on the number and nature of offences relating to prostitution, sexual exploitation and sex tourism involving persons under 18 years of age and noted the number of investigations and convictions relating to child prostitution and pornography. The Committee also noted the concluding observations of the Committee on the Rights of the Child of 7 April 2011 on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which expressed concern at the high level of child sex tourism, especially in tourist areas (CRC/C/OPSC/MEX/CO/1, paragraph 27).

The Committee notes from the statistics provided by the Government in its report that between June 2011 and July 2012, FEVIMTRA has initiated a total of 14 investigations into cases of pornography involving persons under 18 years of age, which are currently pending. The Committee also notes that, according to the federal database compiling information on the number and nature of offences relating to prostitution, sexual exploitation and sex tourism involving persons under 18 years of age, between June 2011 and July 2012 a total of 11 offences relating to the use of a child for pornography were reported in the states of Chiapas and Chihuahua. The Committee further notes that the Office of the Attorney General of the Republic reports that on 21 February 2012 a conviction was handed down for child pornography imposing a sanction of seven years' imprisonment. ***The Committee requests the Government to continue to provide information on the number of reported violations, investigations, prosecutions, convictions and criminal penalties imposed for violations involving child prostitution and child pornography.***

*Articles 3(d) and 4(1). Hazardous work and deterioration of hazardous types of work.* In its previous comments the Committee noted that certain provisions of the national legislation set the age of 18 years for admission to certain types of work which, by their nature and the circumstances in which they are carried out, are likely to harm the health, safety or morals of young persons. However, it also noted that, with the exception of those provisions, the general age established for admission to hazardous and unhealthy kinds of work is 16 years. The Committee also noted that the Government in collaboration with ILO-IPEC has drawn up a list of hazardous and unhealthy types of work prohibited for children with a view to adoption as national legislation.

The Committee notes that on 14 November 2012, the Senate and the Congress approved the Decree to reform the Federal Labour Law entitled “Initiative to reform, add and repeal various provisions of the Federal Labour Law”, which includes a detailed list of hazardous child labour for children in sections 175 and 176. The Committee notes that the entry into force of the Decree is still pending and dependent on the signature by the President and the publication of the Decree in the *Official Bulletin*. While welcoming the list, the Committee notes with **concern** that only a small number of activities (6) listed in section 176(b) are prohibited for persons under 18 years of age, whereas section 176(a) allows the engagement of children in a series of hazardous activities (27) as of 16 years of age. Hence, with the exception of section 176(b), the general minimum age established for admission to hazardous and unhealthy kinds of work remains unchanged at 16 years. In this regard, the Committee previously noted that no provisions exist in the Mexican legislation which authorize the employment or work of young persons as from the age of 16 under strict conditions of protection and prior training, pursuant to Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). The Committee notes that the labour law reform process has not addressed this matter and no such provisions are part of the abovementioned Decree.

In this context, the Committee also points to the results of the “Child labour” module published as part of the 2011 national survey of employment and occupation which reports that in 2011 a total of 28 per cent of all working children and young persons between 5 and 17 years of age were exposed to risks in their work. This percentage is equivalent to 850,000 children, of whom, 79.3 per cent are boys and 20.7 per cent are girls. These risks include exposure to dust, fumes or fire, excessive noise, moisture or extreme temperatures, dangerous tools, heavy machinery, excessive darkness, chemicals, explosives, and electric shock. The Committee notes that many of these risks correspond to the activities listed in section 176(a) of the abovementioned Decree, which are permitted for children as from the age of 16 years.

The Committee, therefore, once again observes that the general minimum age established by the Federal Labour Law, even after approval of the labour law reform process, for admission to hazardous and unhealthy kinds of work is 16 years (section 175(a)), in contravention of *Article 3(d)* of the Convention. The Committee reminds the Government that, under *Article 3(d)* of the Convention, work which, by its nature and the circumstances in which it is carried out, is likely to harm the health, safety and morals of children, constitutes 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. It also recalls that Paragraph 4 of Recommendation No. 190 addresses the possibility of authorizing the employment or work of young persons as from the age of 16 under strict conditions that their health and safety be protected and that they receive adequate specific instruction or vocational training in the relevant branch of activity, as well as the consultation of employers’ and workers’ organizations.

The Committee notes with **concern** the large number of children between 16 and 18 years of age engaged in hazardous activities in practice. ***The Committee again urges the Government to take the necessary measures to bring its legislation in conformity with Article 1 of the Convention, read in conjunction with Article 3(d), so as to ensure that hazardous work is prohibited for children under 18 years. However, where such work is performed by young persons between 16 and 18 years, the Committee again urges the Government to take the necessary measures to ensure that work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that the health and safety of such young persons be protected and that they receive adequate specific instruction or vocational training in that activity. The Committee requests the Government to provide information on the progress made in this regard.***

*Article 6. Programmes of action. Trafficking.* Further to its previous comments, the Committee notes that the Government has adopted a range of measures in the context of the 2011 National Programme for the prevention and suppression of trafficking. In collaboration with the United Nations Office on Drugs and Crime (UNODC), the Government is carrying out a diagnostic study on the national situation of trafficking in persons. In addition, the Committee notes the development of a number of protocols to align procedures for the investigation and prosecution of cases of trafficking, as well as on attention to victims, the development of mechanisms to alert populations vulnerable to trafficking in persons (in particular indigenous peoples and young persons), various information and awareness raising activities, as well as capacity building efforts undertaken for public officials engaged in the prevention and investigation of cases of trafficking in persons. ***The Committee requests the Government to continue to provide information on the measures taken in the context of the National Programme for the prevention and suppression of trafficking, in particular as regards the elimination of the sale and trafficking of children.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in, and removing them from, the worst forms of child labour, and ensuring their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* In its previous comments, the Committee noted the detailed information on the measures carried out in the context of the National Plan of Action for preventing, combating and eliminating the sexual exploitation of children, in particular as regards awareness-raising activities and the care provided to victims of trafficking and commercial sexual exploitation in specialized centres.

The Committee notes that the Office of the Attorney General of the Republic, in collaboration with the Secretary of Tourism and other stakeholders, has developed a national code of conduct for the protection of children and young persons in the tourism sector, with a view to creating and strengthening the links with the judicial system as regards

trafficking in persons and to share indicators and vulnerability factors to identify possible victims of trafficking. The Committee furthermore notes the Government's indications that in September 2011, the Social Office for Care to Victims of Crime (PROVICTIMA) was created which provides the following types of services to victims of trafficking and sexual exploitation: medical assistance; specialized psychological care; legal advice; and social work services. PROVICTIMA also administers a highly secure centre to protect and provide integral care to victims of trafficking and extreme violence.

***The Committee urges the Government to continue to take measures to remove children from trafficking and commercial sexual exploitation and ensure their rehabilitation and social integration. It again requests the Government to provide information on the measures taken in this respect, including under the National Plan of Action for preventing, combating and eliminating the sexual exploitation of children, as well as on the results achieved in terms of the number of children removed from this worst forms of child labour and their subsequent rehabilitation and social integration.***

***Article 8. International cooperation.*** In its previous comments, the Committee noted that further to the conclusion of Memorandum of Understandings (MOUs) with several Central American countries, a large number of child protection officers had been trained with a view to the creation of a regional protection model and that a bi-national study on trafficking between El Salvador and Mexico was in progress. The Committee notes the Government's indications that in the context of the MOUs signed with El Salvador, Guatemala, Honduras and Nicaragua, specialized capacity building activities were carried out to ensure the safe repatriation of unaccompanied children and young persons who are victims of trafficking. The Government also informs that the bi-national study on trafficking between El Salvador and Mexico is not yet available. ***The Committee requests the Government to continue to provide information on the measures taken and the results achieved in the context of the MOUs signed with the Governments of Guatemala, Honduras, El Salvador and Nicaragua. It also requests the Government to provide a copy of the bi-national study on trafficking between El Salvador and Mexico when it is available.***

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

## Mongolia

### ***Minimum Age Convention, 1973 (No. 138) (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 1 of the Convention. National policy designed to ensure the effective abolition of child labour.*** In its previous comments, the Committee noted that in 2002 the Government approved a National Programme of Action for the Development and Protection of Children for 2002–10 (NPA 2002–10). It noted that particular attention has been given to the issue of child labour in this document and that one of its objectives is to amend national legislation to ensure the protection of children. The Committee requested the Government to provide information on any developments regarding the review and possible amendments to the Labour Code and the Law on the Protection of the Rights of the Child in order to better address the problem of child labour. The Committee noted in the Government's report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the Labour Code has recently been amended. It also noted that the NPA 2002–10 is ongoing, as are a number of other projects and programmes, most of them dealing with the worst forms of child labour. ***The Committee requests the Government to supply a copy of the recently amended Labour Code. The Committee also requests the Government to continue providing information on the NPA 2002–10, or any other such programmes, aimed at ensuring the effective abolition of child labour.***

***Article 2(1). Scope of application.*** The Committee previously noted that the Labour Code, according to its section 4, covers relations governed by a labour contract, defined as a mutual agreement on work for pay between an employee and an employer (section 3(1)(3)). The Committee therefore noted that the Labour Code appeared to exclude work performed outside the framework of a labour contract and self-employment from its scope of application. In this regard, the Committee noted the Government's information that, according to the survey conducted by the Mongolian Employers' Federation in 2003, 54.3 per cent of employers involved in the survey had been employing children without a labour contract. In this regard, the Committee requested the Government to provide information on the manner in which protection is given to children carrying out an economic activity that is not covered by a labour contract, such as work on their own account.

The Committee noted the information in the Government's report that, following an audit by the ILO on labour inspection in Mongolia, the Parliament approved a review of the Labour Code and state policy on informal employment. The Committee noted that the Government plans to revise the Labour Code to extend its scope of application in 2010. The Committee also noted the Government's statement that child protection is still weak in the informal sector. The Committee further noted the information in the Human Rights and Freedoms in Mongolia Status Report, issued in 2007 by the National Human Rights Commission of Mongolia, that approximately 6,950 children were working in the informal economy in urban areas (page 50). ***The Committee requests the Government to take the necessary measures to ensure that, within the review of the Labour Code and the state policy on informal employment, protection is given to children carrying out work on their own account or in the informal economy. The Committee requests the Government to continue to provide information on developments in this regard.***

***Article 2(3). Age of completion of compulsory education.*** In its previous comments, the Committee noted that, according to section 109(2) of the Labour Code, a person aged 15 years may enter into a labour contract with the permission of parents or guardians. It noted however that, according to National Programme for the Prevention and Elimination of Child Labour in Mongolia (Phase II, ILO–IPEC Multi-bilateral Programme of Technical Cooperation of 9 April 2002, page 8), the new Law on Primary and Secondary Education was adopted on 3 May 2002. The Committee also noted that the Government indicated in its report to the Committee on the Rights of the Child (CRC) that “the Law on Education provides that a child shall be provided a compulsory basic education up to 17 years of age” (CRC/C/65/Add.32 of 15 November 2004, page 19). The Committee observed

that the minimum age of 15 years specified by the Government seems to be lower than the age of completion of compulsory schooling.

The Committee noted, in its concluding observations, that the CRC expressed concern “about some contradictory provisions of the domestic laws leaving children without adequate protection, e.g. the compulsory school age is 17, whereas the labour law allows children aged 14 and 15 years old to work 30 hours per week” (CRC/C/15/Add.264, 21 September 2005, paragraph 9). The Committee further noted in the Government’s report submitted under Convention No. 182, that the Law on Education was amended in December 2006, and noted the Government’s statement in its report to the CRC of 9 June 2009 that education is mandatory until the age of 16 (CRC/C/MNG/3-4, paragraph 280).

The Committee recalled that, pursuant to *Article 2(3)* of the Convention, the minimum age for admission to employment (currently 15 years) should not be lower than the age of completion of compulsory schooling. The Committee also considered that compulsory schooling is one of the most effective means of combating child labour. If the age of admission to employment and the age limit for compulsory education do not coincide, a number of problems may arise. For example, if the age of completion of compulsory education is higher than the minimum age for admission to work or employment, children who are required to attend school are at the same time legally competent to work and may be tempted to abandon their studies. ***The Committee therefore requests the Government to indicate the legislative provisions contained in the Law on Primary and Secondary Education, in the Law on Education or in any other legislation, fixing the actual age of completion of compulsory education and to supply a copy of the same. Noting that the minimum age for admission to employment appears to be less than the age of completion of compulsory schooling, the Committee requests the Government to take the necessary measures to raise the minimum age for admission to employment in order to link it with the age of completion of compulsory schooling in conformity with Article 2(3) of the Convention.***

*Providing education for school drop-outs.* The Committee noted that, according to the National Programme for the Prevention and Elimination of Child Labour in Mongolia (Phase II, ILO–IPEC Multi-bilateral Programme of Technical Cooperation of 9 April 2002, page 9), since the mid-1990s, school enrolment has been gradually improving and the school drop-out rate has reversed.

The Committee noted in the Government’s report submitted under Convention No. 182 that the National Statistical Office with support from UNICEF carried out the “Random sampling research on groups with mixed indicators” in 2005–06. One finding of this research was that 90.2 per cent of children living in Ulaanbaatar are studying in secondary school versus only 76.1 per cent in the remote rural areas, mostly due to a high drop-out rate for children of herders, who need the assistance of their children in their family’s livestock herding activities. The CRC expressed similar findings (CRC/C/15/Add.264, 21 September 2005, paragraphs 51–52). The Committee noted that the Ministry of Education, Culture and Science, with financial support from UNICEF, is implementing the “Circular for alternative training of primary, basic and complete secondary education” (Circular). This Circular, as well as the newly amended Law on Education both make explicit provisions for providing working children and drop-out children with educational services, including informal education. ***The Committee requests the Government to continue providing information on the impact of the Circular, and any other measures taken, on providing educational services to both working and drop-out children as well as in increasing school attendance rates, in particular in the remote areas. It also requests the Government to continue providing statistical information on school attendance and school drop-out rates, in particular in rural schools.***

*Article 7. Light work.* The Committee previously noted that, according to a national survey conducted by the National Statistical Office in 2000, quite a number of children under the specified minimum age for admission to employment are economically active in some way or another. The Committee recalled that *Article 7(1)* of the Convention provides that national laws or regulations may permit persons from the age of 13 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 at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee also recalled that, according 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. ***Noting the absence of information in this regard, the Committee once again requests the Government to indicate the measures taken or envisaged in respect of provisions to determine light work activities and the conditions in which such employment or work could be undertaken by young persons of 13 years or more.***

*Article 8. Artistic performances.* The Committee previously noted that section 25(6) of the Law on the Protection of the Rights of the Child provides that individuals and officials using a child in press and commercial advertising without the consent of the child or his/her parents, guardians, caregivers and conducting profit-oriented activities illegally using the name of the child will face a penalty of 20,000–30,000 tughriks with confiscation of their income and profit. The Committee recalled that, according to *Article 8* 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. Permits so granted shall limit the number of hours during which, and prescribe the conditions in which, employment or work is allowed. It requested the Government to indicate whether in practice children under the age of 15 years participate in artistic performances and, if so, to provide information on provisions of the national legislation which determine conditions of such work. The Committee noted the information in the Government’s report that, pursuant to section 8.1 of the Law on the Protection of the Rights of the Child, a list of plays and performances which may adversely affect a child’s health shall be developed and approved by Governmental officials responsible for health issues. ***The Committee requests the Government to provide a copy of this list, once approved.***

*Article 9(1). Penalties.* In its previous comments, the Committee noted that, according to section 141(1)(6) of the Labour Code, if an employer forces minors to do work prohibited to them, or to lift or carry loads exceeding the prescribed limits, or has required employees under 18 years of age to work in a workplace that adversely affects their health and mental development, or in abnormal working conditions, or compels them to work overtime or during public holidays or weekends, the state labour inspector shall impose a fine on that officer of 15,000–30,000 tughriks. It also noted that section 25(5) of the Law on the Protection of the Rights of the Child provides for penalties for engaging a child in hazardous work stating “individuals forcing the child to beg and officials engaging the child in a work harmful for his/her health will face a penalty of 10,000–20,000 tughriks”.

The Committee noted in the Government’s report, submitted under Convention No. 182, that the penalties for breach of provisions found in the Criminal Code (such as human trafficking in children, involvement in pornography, sexual exploitation, drug trafficking) and other laws relating to children’s rights are appropriate. However, the penalties imposed upon employers, parents and other representatives in connection with employment in hazardous work are weak. The Committee further noted the

Government's indication that the fine imposed upon someone employing minors in prohibited work is insufficiently small to deter employers from resorting to the labour exploitation of minors. The Government indicated that much still remains to be done in relation to updating the legislation by imposing penalties, by ordering injunctions and ameliorating the penalty mechanism imposed upon parents and family members who allow the employment of children in the worst forms of child labour. **The Committee encourages the Government to continue updating the legislation in this regard and requests it to provide information on any developments thereof. The Committee also requests the Government to take the necessary measures to ensure that a person found to be in breach of the provisions giving effect to the Convention, in particular those in respect of hazardous work, is prosecuted and that adequate penalties are imposed. It asks the Government to provide information on the types of violations detected, the number of persons prosecuted and the penalties imposed.**

*Article 9(3). Registers of employment.* In its previous comments, the Committee noted that the national legislation does not appear to contain provisions on the obligation of an employer to keep and make available the registers of persons under the age of 18 whom he/she employs. The Committee reminded the Government that, in accordance with *Article 9(3)* of the Convention, national laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer containing 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 less than 18 years of age. **Noting the absence of information in the Government's report, the Committee once again requests the Government to indicate in which manner it ensures that employers shall keep and make available registers, which contain the names and ages or dates of birth, duly certified whenever possible, of persons under the age of 18 years employed or working for them.**

*Part V of the report form. Application of the Convention in practice.* The Committee noted in the Government's report submitted under Convention No. 182 that the National Statistics Office recently conducted the second National Child Labour Survey (2006–07) (NCL Survey). The Committee noted 621,500 children, of which 60.3 per cent were boys and 39.7 per cent girls, were covered in the NCL Survey and that at least 11.5 per cent worked at least one hour a week or were economically active. Though the survey has some shortcomings as it did not include homeless children, as well as those living in correctional labour colonies, orphanages and childcare institutions, it is nevertheless significant in creating the official and objective database. The prevalent sectors of work for children were: 84.6 per cent in agriculture; 5.1 per cent in services; 3.5 per cent in trade and industry; and 5.8 per cent in sweatshops. In relation to the employment relationship, the NCL Survey indicated that 93.1 per cent of working children work in household enterprises and are not paid, 9.2 per cent are self-employed and 1.7 per cent have a contractual relationship.

Another survey, conducted by the Mongolian Employers Federation in 2003, (Employers' Survey), reveals that labour standards in relation to children working in the formal sector are not always adhered to: 59.5 per cent of employers hiring children aged 14–18 years of age did not conclude any contracts and 29.2 per cent were employing the children on a wage or work performance contract. The main motives for not concluding a contract were not wanting to pay the social insurance premiums and other deductions (36 per cent) and the temporary nature of the employment (52 per cent). According to the reports submitted by employers and used in the Employers' Survey, 46 per cent of the children's conditions at the workplace were deemed "normal", 11.7 per cent were too hot, 21 per cent too dusty or with poor air circulation and 10.6 per cent were too noisy.

In addition, the Committee noted that the Population Training and Research Centre of the National University of Mongolia also carried out a survey which focused mostly on children aged 16–18 years of age working in the gold- and coal mining sectors in the Selenge and Tuv aimags (provinces). This survey indicates that most children started mining at an average age of 12, work an average of four hours per day in the winter, and an average of eight to nine and 10–11 continuous hours in the summer for children aged below 16 and 16–18, respectively. A total of 37.7 per cent of the children mining gold used mercury and 66.7 per cent of them work at home. Of these, 22.5 per cent have been involved in an accident in which 92.6 per cent have injured their legs, arms or their organs. Half of all children mining gold experience some form of health problem: 43.3 per cent suffer regularly from respiratory diseases, 41.7 per cent suffer from kidney and urinary disorders, 25 per cent suffer from orthopaedic illnesses and 23.3 per cent suffer from ear, nose and throat diseases.

Finally, the Committee noted that the report "Understanding children's work and youth employment outcomes in Mongolia", issued in June 2009 by the ILO, UNICEF and the World Bank (through the Understanding Children's Work Project), indicates that 13.2 per cent of children between the ages of 5 and 14 are engaged in economic activity and that 7.5 per cent of children between the ages 15 and 17 are engaged in hazardous work. The Committee also noted that, in its concluding observations, the CRC expressed concern "at the high rate of working children in Mongolia and the various kinds of negative consequences resulting from the exploitation of child labour, including the school drop outs and negative impacts on health caused by the harmful and hazardous work. The high number of child domestic and rural workers and children working in very harmful conditions in gold and coal mines give cause for serious concerns" (CRC/C/15/Add.264, 21 September 2005, paragraph 59). **While noting the efforts made by the Government to combat child labour, the Committee expresses serious concern at the large number of children working under the age of 15, as well as the significant number of children engaged in hazardous occupations, and therefore strongly encourages the Government to redouble its efforts to improve the situation, including through the allocation of additional resources for the implementation of measures aimed at combating child labour. The Committee also requests the Government to continue providing information on the situation of child labour in Mongolia and, in particular, to supply copies or extracts from official documents of inspection services. The Committee also asks the Government to provide information on the number and nature of the contraventions reported and penalties imposed.**

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

## Morocco

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

*Article 1 of the Convention. National policy.* In its previous comments, the Committee noted the adoption of a National Action Plan for Children (2006–15) (PANE), a major component of which is devoted to combating child labour. In this regard, the Committee noted that the activities envisaged in the PANE include support for NGOs working to combat child labour and the preparation for 2012 of a study on the working conditions of children. The Committee also noted that the PANE aims to remove children under 15 years of age from work situations at the rate of 10 per cent a year until 2015 and to improve the situation of needy families at the rate of 5 per cent a year. The Committee noted the

Government's indications that significant efforts were made during the first phase of the implementation of the PANE between 2006 and 2010. The Committee also observed that a Bill on domestic work had been finalized, with the objective of determining the working conditions and terms and conditions of employment of domestic workers and prohibiting the employment of girls under 15 years of age as domestic workers.

The Committee notes the Government's indications that a process of updating the PANE has been initiated in light of the new sectoral strategies developed in 2007 with a view to introducing new indicators to improve follow-up and evaluation, and that the process was completed with the holding of the national mid-term evaluation workshop of the PANE and the preparation of its second phase in May 2011 in Rabat. The Government adds that a copy of the Bill on domestic workers will be provided once it has been adopted, and that the study on the working conditions of children in the region will be commenced in the near future. ***The Committee requests the Government to continue providing information on the implementation of the PANE and on the results achieved in terms of the progressive abolition of child labour. It requests the Government to provide a copy of the Act on domestic work, when it has been adopted. It also requests the Government to supply the findings of the national study on working conditions, once it has been completed. In so far as possible, statistical data should be disaggregated by age and sex.***

*Article 2(1) and (3). Scope of application and compulsory schooling.* In its previous comments, the Committee noted that, under section 143 of the Labour Code, minors may not be employed or admitted to enterprises or the premises of employers before the age of 15 years, and it observed that the protection provided by the Labour Code does not apply to persons working on their own account. The Committee noted the Government's indication that the Labour Code does not protect children working on their own account, but that the latter are protected by the Dahir of 13 November 1963 on compulsory education, as amended by Act No. 04.00 of 25 May 2000, under which parents are required to enrol their children in school and which establishes penalties for refusal to do so. The Committee also noted that labour inspectors are only authorized by law to enforce the application of the labour legislation when there is an employment relationship. Consequently, labour inspectors do not carry out any supervision in the informal economy. The Committee however noted that an emergency plan had been adopted for the period 2009–12, consisting of ten projects aimed at giving effect to the requirement to attend school up to the age of 15 years including, in particular, the development of the pre-school level, equality of opportunity with regard to access to compulsory education and measures to reduce the repetition of classes and school drop-out rates.

The Committee notes the Government's indications concerning the measures taken in the context of the emergency programme. The Government indicates that, in order to guarantee a place for each child in school, the Ministry of National Education created 499 new schools, including 205 primary schools, 88 middle schools and 136 high schools, which opened their doors between the 2007–08 and 2010–11 school years. The Ministry also plans the establishment of 290 additional schools, consisting of 141 primary schools, 78 middle schools and 71 high schools. Furthermore, with a view to combating school drop-outs, the Ministry has established educational mechanisms for the personalized follow-up of students at school. In this context, the Government indicates that 4,066,649 children benefited from personalized follow-up measures in 2011. The Committee notes with *interest* the Government's indication that satisfactory results continue to be achieved: primary schooling is almost generalized, as the school enrolment rate recorded in 2011–12 is 97.9 per cent (97 per cent for girls); the rate of the repetition of classes in primary school fell between 2008–09 and 2011–12 from 16 to 8.2 per cent; and the drop-out rate in primary school was 3.2 per cent in 2011–12. ***Considering that compulsory schooling is one of the most effective means of combating child labour, the Committee encourages the Government to continue its efforts to increase the school enrolment and completion rates and to reduce the rate of repeating school years and of school drop-outs, particularly for children under 15 years of age, with a view to preventing them from working on their own account and in the informal economy. It requests the Government to continue providing information on the progress achieved in this respect.***

*Article 2(1) and Part V of the report form. Minimum age for admission to employment and application of the Convention in practice.* 1. *Child workers in informal artisanal activities and other sectors.* In its previous comments, the Committee noted the information provided by the International Trade Union Confederation (ITUC), according to which child labour was common in informal artisanal activities. It also noted that, according to the report entitled, "Understanding children's work in Morocco" (pp. 19, 20, 22 and 23), some 372,000 children aged between 7 and 14 years, representing 7 per cent of the reference group, were engaged in work, while for the 12 to 14 age group, 18 per cent of children were economically active. According to this study, 87 per cent of working children were in rural areas, where they were working in the agricultural sector. In urban areas, children were engaged in the textile, commercial and repairs sectors. The Committee noted the assessment of the activities undertaken with ILO-IPEC support for the prevention and removal of thousands of children from work. However, it observed that, under the terms of section 4 of the Labour Code, employers in purely traditional sectors, that is those involving manual work, with the assistance of their partners, ascendants and descendants, and with a maximum of five assistants, at home or in another place of work, for the purpose of manufacturing traditional products for commercial sale, are excluded from the scope of application of the Labour Code. The Committee therefore noted that children employed in informal artisanal activities, or formal artisanal activities involving five employees or fewer, do not benefit from the protection of the Labour Code and, consequently, from the application of the minimum age of 15 years. The Committee requested the Government to take measures to ensure that the minimum age of 15 years is duly applied to all children working in artisanal activities.

The Committee notes the Government's indication that a Bill to determine the conditions of work and employment in activities of a purely artisanal nature has been prepared in collaboration with the Department of Artisanal Activities. The Bill includes a section prohibiting work by children under the age of 15 years, in accordance with sections 143 and 153 of the Labour Code. The final version of the Bill has been sent to the General Secretariat of the Government and is in the process of being adopted. The Government adds that the Ministry of Artisanal Activities, in collaboration with ILO-IPEC, is continuing to work on projects to combat child labour in the artisanal sector. ***Expressing the hope that the Bill to determine the conditions of work and employment in activities of a purely artisanal nature will establish a minimum age of 15 years for all children working in artisanal activities, the Committee requests the Government to take measures to ensure that the Bill is adopted in the near future and to provide a copy to the Office. It requests the Government to continue its efforts to combat child labour and requests it to continue providing information on the implementation of any relevant projects, and on the results achieved with regard to the progressive abolition of child labour, particularly in the artisanal sector.***

2. *Child domestic workers.* In its previous comments, the Committee noted that, according to the report "Understand children's work in Morocco", children working in urban areas were mainly engaged in domestic work. The Committee also noted that, according to the observations provided previously by the ITUC, some 50,000 children, mainly girls, are employed in domestic work, including 13,000 young girls under the age of 15 who are employed as servants in Casablanca, with 70 per cent of them being under 12 years of age and 25 per cent under 10 years of age. In this respect, the Committee noted that a Bill on domestic work had been formulated in 2007 and was in the process of being validated. The Bill fills the current legislative gap and sets the minimum age for admission for this type of employment at 15 years, lays down conditions of work and establishes supervisory measures and penalties, including imprisonment, for persons employing children under 15 years of age. The Committee noted the Government's indication that the process of adopting the Bill on domestic work had been under way since June 2011.

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, with the entry into office of the new Government, the Bill on domestic work has been withdrawn from Parliament and submitted once again to the Council of the Government on 12 March 2012, which deferred it for in-depth examination. ***The Committee once again expresses the firm hope that the Bill which has been under examination for a certain number of years, will be adopted in the very near future. It requests the Government to provide information in its next report on the progress achieved in this respect.***

*Article 8. Artistic performances.* In its previous comments, the Committee noted that Decree No. 2-04-465 of 29 December 2004 prohibits the engagement of any person under 18 years of age as an employed actor or performer in public performances without the written authorization of the official responsible for labour inspection, following consultation with the minor's guardian. The Committee also noted the Government's indication that Decree No. 2-04-465 of 29 December 2004 does not establish the particulars of the authorization by parents and the labour inspector, nor the penalties to be applied in the event of violations, and that the law establishes details concerning working hours and conditions. In this respect, the Committee noted that section 145 of the Labour Code provides that "[n]o minor under 18 years of age may, without the prior individual authorization in writing of the official responsible for labour inspection, for each minor, following consultation with the minor's guardian, be employed as an actor or performer in public performances organized by enterprises, the list of which is determined by regulation. The official responsible for labour inspection may withdraw the authorization granted previously, either at her or his own initiative or at the initiative of any authorized person". The Committee however noted that this provision does not require that permits granted to minors under 18 years of age, under the Decree No. 2-04-465 of 29 December 2004, shall limit the number of hours during which and prescribe the conditions in which such employment or work shall be allowed.

The Committee observes that the Government's report does not contain any further information on this subject. It once again reminds the Government that *Article 8* of the Convention requires the permits granted allowing minors under 18 years of age to participate in artistic performances to limit the number of hours during which and to prescribe the conditions in which employment or work is allowed. ***The Committee once again requests the Government to take the necessary measures to amend the national legislation to bring it into conformity with Article 8 of the Convention, so that permits granted to minors under 18 years of age allowing them to participate in artistic performances explicitly limit the number of hours during which and prescribe the conditions in which employment or work is allowed.***

*Article 9(1). Penalties.* The Committee previously noted that section 151 of the Labour Code provides that the employment of a child under 15 years of age, in breach of section 143 of the Labour Code, shall be punishable by a fine of 25,000–30,000 dirhams (US\$3,000–\$3,600), and that a repeat offence is subject to a term of imprisonment of six days to three months and/or a fine of 50,000–60,000 dirhams (US\$6,000–\$7,200). It nevertheless noted that sections 150 and 183 of the Labour Code provide for a fine of between 300 and 500 dirhams (between US\$36 and US\$60) for breaches of section 147 of the Labour Code (prohibiting the employment of children under 18 years of age in hazardous work) or section 179 (prohibiting the employment of children under 18 years of age in quarries or mines, or in work likely to hamper their growth). The Committee also noted that, before resorting to penalties, labour inspectors have to give advice and information to employers on the dangers to which child workers are exposed. Under the terms of sections 542 and 543 of the Labour Code, a labour inspector who detects a violation of the legislative provisions or regulations respecting safety and healthy, which poses an imminent risk to the health or safety of the workers, shall issue an order requiring the

employer to take all the necessary measures immediately. If the employer refuses or fails to comply with the requirements set out in the order, the labour inspector shall immediately refer the matter to the president of the court of first instance, who may give the employer a deadline for taking all the necessary measures to prevent the imminent danger and may order the closure of the establishment and determine, where appropriate, the necessary duration of the closure. The Committee observed that persons who have employed children in breach of the provisions giving effect to the Convention are not generally prosecuted if such employment is brought to an end.

The Committee notes the Government's indications that 383 establishments were inspected in 2011, and that 1,234 reports of violations were drawn up and 63 warnings were issued to employers. In addition, four notifications were referred to the competent courts for decision. The Government indicates that the sectors which mainly employ children under 15 years of age are commerce and mechanical work (40 per cent), carpentry (23 per cent), manufacturing (15 per cent) and textiles and agriculture (5 per cent). The Committee notes that, according to the 2011 report on child labour at the national level provided by the Government with its report, labour inspections revealed that the violations reported by employers in relation to child labour often relate to failure to comply with the minimum age for employment or work. According to the report, in such cases, the employers often respond positively to the observations made by inspectors, particularly in relation to the employment of children below the minimum age of 15 years, and the children are immediately removed from the work in question.

However, the Committee once again observes that the penalties envisaged in sections 150 and 183 of the Labour Code in relation to the employment of children under 18 years of age in hazardous work are still not sufficiently adequate and dissuasive to ensure the application of the provisions of the Convention respecting hazardous work, in accordance with *Article 9(1)* of the Convention, particularly when compared with the penalties envisaged in section 151 of the Labour Code, which are much more severe. The Committee once again reminds the Government that it is necessary to ensure the application of the Convention through penalties set out in law. ***The Committee therefore once again urges the Government to take the necessary measures to ensure that any person in breach of the provisions prohibiting the employment of children under 18 years of age in hazardous types of work is prosecuted and that sufficiently effective and dissuasive penalties are applied. It once again requests the Government to provide information on the type of violations detected by the labour inspection services, the number of persons prosecuted and the penalties imposed, particularly in relation to the provisions giving effect to the Convention.***

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)***

*Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic labour.* In its previous comments, the Committee noted the statement by the International Trade Union Confederation (ITUC) that child domestic labour, performed under conditions of servitude, is common practice in the country, with parents selling their children, sometimes as young as six years of age, to work as domestic servants. 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 also noted that a Bill on domestic work had been adopted and was in the process of being validated. 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, which may include imprisonment for persons employing children under 15 years of age. The Committee further noted that a specific list determining hazardous types of work prohibited in the domestic work sector would be drawn up and adopted in conjunction with the future Bill on the conditions of employment and work of domestic workers. This Bill has been in the process of being adopted since June 2011.

The Committee also noted that an initial qualitative and quantitative survey of girls under 18 years of age engaged in domestic work had been undertaken in 2001 in the *Wilaya* of Casablanca. According to the results of the statistical survey undertaken in 2001, nearly 23,000 girls under 18 years of age were working in the Greater Casablanca area as domestic workers, 59.2 per cent of whom were under 15 years of age. The Committee noted that the survey revealed that a significant proportion of these girls were uneducated, were subject to penalties or punishment in the course of their work, received beatings and/or were subjected to sexual abuse. The Committee noted that a second survey was planned in the Greater Casablanca area during the second half of 2010, with an extrapolation of the results and data at the national level. The Committee further noted the Government's indications that the figures recorded by the 2001 survey have decreased significantly since then, owing to the efforts made by Morocco in recent years, especially to combat school drop-outs and all other forms of social exclusion. With regard to the second survey to be conducted on girls engaged in domestic work in Casablanca, the Government indicated that the methodological report which determines the target group and planning of the survey had been drawn up and the survey itself was being undertaken.

The Committee notes the Government's indications that, with the entry into office of the new Government, the Bill on domestic work was withdrawn from Parliament and resubmitted to the Council of the Government on 12 March 2012, which deferred it for in-depth examination. With regard to the survey on girls engaged in domestic work in Casablanca, the Government indicates that it commenced during the course of 2012 and that the results will be provided when they have been published. The Committee reminds the Government that young girls engaged in domestic work are often victims of exploitation and that the clandestine nature of such work makes it difficult to monitor their conditions of employment. It also reminds the Government that, under the terms of *Article 1* of the Convention, each member State shall take immediate and effective measures to secure the prohibition of the worst forms of child labour as a matter of



urgency. *Observing that the Government has been referring to the adoption of the Bill on domestic work and the specific list of prohibited types of hazardous work in the domestic work sector for several years, the Committee urges it to take the necessary measures to ensure that the Bill and the list are adopted on an urgent basis. The Committee also requests the Government to take the necessary measures to conclude the survey on the situation of young girls engaged in domestic work in Casablanca in the very near future and to provide a copy of the findings to the Office with its next report.*

*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 the amendment to the Penal Code in 2003 making sex tourism a criminal offence. It noted the Government's indications that the scourge of the sexual exploitation of children remains unseen and unrecognized in Morocco, for which reason the Government is sparing no effort to address it. The Committee also noted that five child protection units (UPEs) had been set up since 2007 in Marrakech, Casablanca, Tangier, Meknès and Essaouira to ensure better medical, psychological and legal assistance for child victims of violence and ill treatment, including child victims of sexual and economic exploitation, and that hundreds of children have benefited. The Committee also noted that, as part of the National Action Plan for Children (PANE) for the decade 2006–15, 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.

The Committee notes the lack of information in the Government's report on the activities of the UPEs and on the results achieved through the implementation of the National Strategy to Combat the Sexual Exploitation of Children. *The Committee, therefore, urges the Government to take immediate and effective measures to ensure that the National Strategy to Prevent and Combat the Sexual Exploitation of Children will be implemented in the very near future and to provide information in its next report on the progress achieved in this respect. The Committee also requests the Government to provide updated information on the number of children who are prevented from engaging in or removed from prostitution through the UPEs. Finally, the Committee once again asks the Government to provide a copy of the preliminary study on the problem of the sexual exploitation of children undertaken 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 in Domestic Work (INQAD) as part of the PANE. It also noted that, as part of the strategic plan for 2008–12, and following the 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 domestic workers and to prepare regional action plans. It further noted that, as part of the multi-sectoral programme implemented in collaboration with the United Nations Development Programme 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 region of Marrakech Tensift-El Haouz over the period 1 January 2009 to 31 December 2010.

The Committee notes the Government's indications that in 2011, following the activities undertaken with the cooperation of ILO–IPEC, 12,192 children were removed from their workplaces and offered viable alternatives and 20,993 were prevented from engaging in work. The Committee also notes that, according to information available from ILO–IPEC, an IPEC action project to combat domestic work by girls is being implemented up to 2014 in the context of the project to support the implementation of the ILO Declaration (PAMODEC). The ILO/IPEC/PAMODEC project has three main priorities, namely prevention, removal and protection, and emphasizes education, capacity building and national ownership. Activities have already been carried out in the context of the project, including the training of 50 focal points on the improvement of the system of monitoring and information gathering, with a special component on combating domestic work by children, training courses on domestic work by children for NGO educators and social workers and information sessions for primary and middle school teachers and inspectors in the Fès region, the objective of which is to combat more effectively school drop-outs, particularly among girls. *The Committee encourages the Government to intensify its efforts for the identification, removal and reintegration of girls under 18 years of age engaged in domestic work who are victims of economic or sexual exploitation, and requests it to continue providing information on the results achieved, particularly in the context of the ILO/IPEC/PAMODEC project on domestic work by girls. The Committee encourages the Government to ratify the Domestic Workers Convention, 2011 (No. 189), which has key provisions for child protection.*

*Article 5 and Part V of the report form. Monitoring mechanisms and application of the Convention in practice.* In its previous comments, the Committee noted that, in the context of the ILO–IPEC project “Combating child labour in Morocco by creating a suitable environment nationwide and providing for direct intervention against the worst forms of child labour in rural areas”, a number of training sessions were organized to strengthen the capacity of the various actors involved in combating child labour, including 330 labour inspectors and 43 controllers designated as focal points. One of the tasks of the focal points is to monitor establishments employing children. The Committee noted previously the Government's indications concerning the activities undertaken by the focal points in the years 2008–10.

The Committee notes the information provided by the Government on the activities carried out by the focal points in 2011. They visited 383 workplaces, in which they detected 119 child workers under the age of 15 years and 397 child workers between the ages of 15 and 18 years. During the visits, 1,234 reports were drawn up, nine offences and violations were recorded and four cases were referred for prosecution. The sectors employing children between 15 and 18 years of age are commerce and mechanical work (31 per cent), wood working (19 per cent), manufacturing (14 per cent), retail (11 per cent) and the textile industry (8 per cent). The Committee notes that, according to the 2011 report on child labour at the national level, provided by the Government with its report, labour inspections found that children are engaged in work likely to harm their health. The dangers include: the effects of radiation and exposure to injury and burns through welding; the use of machinery with cutting edges and the carrying of heavy loads; the use of chemicals and exposure to dust; the use of paints; the use of electricity, and exposure to high temperatures. The report indicates that when children between the ages of 15 and 18 years are identified in such situations, appropriate work is offered to them as an alternative. ***Expressing its concern at the situation of children under 18 years of age engaged in hazardous types of work and the low number of violations reported and cases referred for prosecution in comparison, the Committee requests the Government to intensify its efforts to ensure that no children under 18 years of age are engaged in the worst forms of child labour, including hazardous types of work. The Committee requests the Government to continue providing information on the application of the Convention in practice, including statistical data and information on the nature, extent and trends of the worst forms of child labour. In so far as possible, all such information should be disaggregated by age and gender.***

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

## Mozambique

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2003)**

*Article 2(1) of the Convention. Scope of application.* 1. *Children working on their own account and in the informal sector.* In its previous comments, the Committee noted that pursuant to sections 1 and 2 of the Labour Law No. 23/2007 (Labour Law), this Law only applies in the context of a labour relationship. It had noted the Government's indication that, in Mozambique, there is no specific regulation governing children who are working outside of an employment relationship, such as those working in the informal economy. In this regard, the Committee had noted the Government's statement in its report to the Committee on the Rights of the Child (CRC) of 23 May 2009, that informal trade is one of the most common forms of labour in which children are involved in Mozambique (CRC/C/MOZ/2, paragraph 356). The Government had also indicated that the control mechanisms for child labour, such as labour inspection, were more effective in the formal than in the informal sector (CRC/C/MOZ/2, paragraph 359). The Committee had finally noted that the CRC, in its concluding observations of 4 November 2009, expressed concern that there were still no specific regulations governing children who are not covered by an employment relationship (CRC/C/MOZ/CO/2, paragraph 80).

The Committee notes that the Government's report contains no information on this matter. ***Recalling that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not there is a contractual employment relationship, the Committee encourages the Government to take measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children carrying out economic activities without an employment relationship or in the informal economy. It requests the Government to provide information on the measures taken in this regard.***

2. *Domestic work.* The Committee had previously noted section 4(2) of the Regulations on Domestic Work (Decree 40/2008) which prohibits domestic work by children under 15 years, while permitting children of 12 years to be hired for domestic work with the permission of a legal representative. The Committee had requested the Government to take the necessary measures to ensure that no child under the age of 15 years is permitted to engage in domestic work, except under the specific conditions laid down in *Article 7* of the Convention for light work.

The Committee notes that the Government's report does not provide for a response to its previous comments, but states that section 4(2) of the Regulation on Domestic Work prohibits hiring minors under the age of 12 years for domestic work. The Committee once again reminds the Government that pursuant to *Article 2(1)* of the Convention, no person under the minimum age (of 15 years) may be engaged in economic activity, including in domestic work, with the exception of light work for children of at least 13 years of age that can only be carried out under conditions laid down in *Article 7* of the Convention. ***The Committee therefore once again requests the Government to take the necessary measures to ensure that no person under the age of 15 is permitted to engage in domestic work, except under the specific conditions laid down in Article 7 of the Convention for light work.***

3. *Rural work.* The Committee had previously noted the Government's statement that the minimum age for admission to employment established in the Labour Law (of 15 years of age) applies to children working in rural work. It had also noted the Government's indication that pursuant to section 3 of the Labour Law, draft regulations on rural work have been developed and was under discussion. The Committee had noted the information from UNICEF indicating that hazardous labour activities involving children were mostly related to farm work either in the cotton or tobacco industries. It had also noted the statement by the CRC, in its concluding observations of 4 November 2009, that child labour

remained a common practice on commercial cotton, tobacco and tea plantations and on family farms where children may, for example, herd livestock (CRC/C/MOZ/CO/2, paragraph 79).

The Committee notes the Government's information that the proposal for the instrument on rural work is still under discussion. The Committee also notes that according to the Multiple Indicators Cluster Survey (MICS) report of 2008, in rural areas, 25 per cent of children are engaged in child labour, compared to 15 per cent in urban areas. ***Expressing its concern at the situation of children involved in child labour, especially agriculture, the Committee once again requests the Government to take the necessary measures to ensure that the minimum age of 15 is applied in practice to this sector. It also requests the Government to provide a copy of the regulation on rural work, once it has been adopted.***

*Article 2(3). Age of compulsory schooling.* The Committee had previously noted the Government's statement that compulsory education started at the age of 6 years and was completed at the age of 13 years. It had therefore observed that the age for completion of compulsory schooling was two years below the minimum age for admission to employment or work (15 years). The Committee had also noted that the CRC, in its concluding observations of 4 November 2009, commended the significant efforts deployed by the Government to increase enrolment rates in primary and secondary education (CRC/C/MOZ/CO/2, paragraph 71). However, the CRC expressed concern that, nearly half of primary school aged children drop out of school before they completed grade 5 (*ibid.*).

With regard to the age of completion of compulsory schooling, the Committee must emphasize the desirability of linking the age of completion of compulsory schooling with the minimum age for admission to work, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). In cases where these two ages do not coincide, various problems can arise. If the compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (see General Survey of 2012 on the fundamental Conventions concerning rights at work, paragraph 371). ***Accordingly, the Committee strongly encourages the Government to consider raising the age of completion of compulsory education so as to coincide with that of the minimum age of 15 years for admission to employment or work. It requests the Government to provide information on any progress made in this regard. Furthermore, considering that compulsory education is the most effective means of combating child labour, the Committee requests the Government to take the necessary measures to strengthen the functioning of the education system, in particular by increasing the school enrolment, attendance and completion rates of children under the minimum age of employment with special focus on children in rural areas.***

*Article 3(2). Determination of hazardous types of employment or work.* The Committee had previously noted that section 23(2) of the Labour Law prohibited employers from employing children under the age of 18 years in work that is unhealthy, dangerous or which required great physical strength, as defined by the competent authorities, after consultation with trade union and employers' organizations. It had noted the Government's statement that no measures had been adopted to determine types of dangerous work prohibited to persons aged under 18 years. The Committee had further noted that the CRC, in its concluding observations of 4 November 2009, urged the Government to define hazardous work prohibited for persons under 18 years old (CRC/C/MOZ/CO/2, paragraph 81).

The Committee notes the absence of information in the Government's report. The Committee, therefore, once again recalls that, by virtue of *Article 3(2)* of the Convention, the types of employment or work which, by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, 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 once again urges the Government to take the necessary measures to include in national legislation provisions determining the types of hazardous work prohibited for persons under the age of 18, in accordance with Article 3(2) of the Convention.***

*Article 6. Vocational training and apprenticeship.* The Committee had previously noted that Chapter IV of the Labour Law regulates vocational training and apprenticeship. It had noted that under section 248(3) of the Labour Law, enterprises or establishments may not admit minors under 12 years of age for apprenticeships. Noting the absence of information in the Government's report, the Committee once again reminds the Government that *Article 6* of the Convention authorizes work to be carried out by young persons within the context of an apprenticeship programme only from the age of 14 years of age. ***In this regard, the Committee once again requests the Government to take measures to ensure that no minor under 14 years of age is permitted to enter into an apprenticeship programme, in conformity with Article 6 of the Convention.***

*Article 7(1). Minimum age for admission to light work.* The Committee had previously noted that, by virtue of section 21(1) of the Labour Law, an employment contract entered into directly with a minor between 12 and 15 years of age shall only be valid with the written authorization from the minor's legal representative. In this regard, the Committee had recalled that pursuant to *Article 7(1)* of the Convention, national laws or regulations may only permit the employment or work of persons of 13 and 15 years of age on light work, provided that such work is not likely to harm their health or development, or 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. ***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 to bring the Labour Law into conformity with Article 7(1) of the Convention by permitting children only from the age of 13 in light work.***

*Article 7(3). Determination of light work.* The Committee previously noted that under section 26(2) of the Labour Law, the Council of Ministers shall issue a legal diploma establishing the nature and the conditions of work that may be performed, in exceptional circumstances, by minors of between 12 and 15 years of age. It had also noted the Government's statement that children between the ages of 12 and 15 years may not be employed in work that is likely to be harmful to their health. The Committee had further noted the statement in the Government's report that the light work referred to in the Labour Law has not been classified.

Noting the absence of information in the Government's report, the Committee once again reminds the Government, that pursuant to *Article 7(3)* of the Convention, the competent authority shall determine what constitutes light work and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. ***Observing that a significant number of children under the minimum age are engaged in child labour, the Committee once again requests the Government to take the necessary measures to regulate this work by determining the types of light work activities permitted for children between the ages of 13 and 15, including the hours during which, and the conditions in which, such employment or work may be undertaken.***

*Article 9(3). Keeping of registers by employers.* The Committee had previously noted that the Labour Law does not prescribe the registers to be kept by employers. It had reminded the Government that under *Article 9(3)* of the Convention, national laws or regulations or the competent authority must prescribe the registers concerning employees under the age of 18, which shall be kept and made available by the employer. ***Noting once again an absence of information in the Government's report on this point, the Committee requests the Government to take the necessary measures to ensure that national laws or regulations or the competent authority prescribe the registers or other documents which shall be kept and made available by the employer containing the names and ages or dates of birth, duly certified, wherever possible, of persons under the age of 18 years who work for them, in conformity with Article 9(3) of the Convention.***

***The Committee strongly encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. In this regard, the Committee reminds the Government that it may avail itself of ILO technical assistance to bring its legislation into conformity with the Convention.***

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. Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously noted that section 63(1)(b) of the Child Protection Act requires the Government to adopt legislative or administrative measures to protect children against all forms of sexual exploitation, including prostitution. It also noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 4 November 2009, expressed deep concern at the increasing number of child prostitution in Mozambique, especially in the Maputo, Beira and Nacala regions, as well as in some rural areas (CRC/C/MOZ/CO/2, paragraph 84). The Committee, therefore, urged the Government to take the necessary measures to ensure the adoption of legislation, pursuant to section 63(1)(b) of the Child Protection Act, prohibiting the use, procuring or offering of a child under the age of 18 for the purpose of prostitution in the very near future.

The Committee once again notes with *regret* that the Government report does not contain any information on this point. It reminds the Government that, under the terms of *Article 3(b)* of the Convention, the use, procuring and offering of a child under 18 years of age constitutes one of the worst forms of child labour and that, under *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. ***The Committee, therefore, requests the Government to take immediate and effective measures to ensure the adoption of legislation prohibiting the use, procuring and offering of a child under 18 years of age for prostitution, in accordance with Article 3(b) of the Convention, as a matter of urgency. It requests the Government to provide information on the progress made in this regard with its next report.***

*Use, procuring or offering of a child for the production of pornography or for pornographic performances.* In its previous comments, the Committee noted that, although national legislation provided for the protection of children from being exposed to pornography, it did not prohibit the use, procuring or offering of children under 18 years of age for the production of pornography or for pornographic performances. It also noted that section 63(1)(c) of the Child Protection Act states that the State must take legislative measures to protect children from all forms of sexual exploitation, including the exploitation of children in pornography or pornographic performances. ***Noting once again an absence of information on this point in the Government's report, the Committee urges the Government to take the necessary measures to ensure the adoption of legislative measures prohibiting the use, procuring or offering of children under the age of 18 for the production of pornography or pornographic performances, pursuant to section 63 of the Child Protection Act.***

*Clause (c). Use, procuring or offering of a child for illicit activities.* In its previous comments, the Committee noted the adoption of the Law on Drugs No. 3/97, which contained provisions relating to the use of minors for the production, transport, distribution and consumption of drugs. The Committee notes that while the Government report states that a copy of the Law on Drugs has been attached, no such attachment has been received along with the report. ***Considering that the Committee has been requesting a copy of the Law on Drugs No. 3/97 since 2005, the Committee expresses the firm hope that the Government will send a copy of this legislation, along with its next report.***

*Clause (d). Hazardous work. Children in domestic service.* The Committee previously noted that pursuant to section 3 of Act No. 23/2007 of 27 August 2007 (Labour Law), Regulations on Domestic Work (No. 40) were adopted on 26 November 2008, section 4(2) of which prohibits employers from employing a person under 15 years of age in domestic work. The Committee, however, observed that these regulations did not address the issue of hazardous domestic work of children. The Committee recalled that children, particularly young girls, engaged in domestic service are often victims of exploitation, and that it is difficult to supervise their conditions of employment due to the clandestine nature of such work. It further noted the Government's statement in its 23 March 2009 report to the CRC that domestic work is one of the most common types of child labour in Mozambique, and that children are frequently forced to work in this sector (CRC/C/MOZ/2, paragraphs 356 and 358).

The Committee notes the absence of information in the Government's report on this matter. In this regard, the Committee notes the information in a report available on the website of the United Nations High Commissioner for Refugees (UNHCR) that children in Mozambique are engaged in the worst forms of child labour, many of them in dangerous work in domestic work. The report further indicated that child domestic workers, work up to 15 hours a day and are subject to physical abuse, including burns. ***Noting with concern the situation of children working as domestic workers, the Committee urges the Government to take immediate and effective measures to protect these children from hazardous types of work. It requests the Government to provide information on the measures taken in this regard. The Committee also encourages the Government to ratify the Domestic Workers Convention, 2011 (No. 189), which has key provisions for child protection.***

*Article 4(1). Determination of hazardous types of work.* In its previous comments, the Committee noted that, pursuant to section 23(2) of the Labour Law, employers shall not engage persons under 18 years of age in hazardous work, as defined by the competent authorities after consultation with the organizations of employers and workers. It noted with concern the Government's statement that no measures had been adopted to determine the types of dangerous work prohibited to persons under the age of 18 years.

The Committee notes the absence of information in the Government's report on this point. The Committee once again reminds the Government that, by virtue of *Article 4(1)* of the Convention, the types of hazardous work prohibited to persons under the age of 18 shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular, Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). ***The Committee, therefore, once again urges the Government to take the necessary measures to ensure that regulations are adopted pursuant to section 23(2) of the Labour Law to determine the hazardous types of work prohibited for children under 18 years of age in the near future. It also requests the Government to provide information on any progress made in this regard.***

*Article 7(2). Effective and time-bound measures. Clause (d). Reaching out to children at special risk. Orphans and other vulnerable children.* The Committee previously noted the information in the Government's report that, between 2005 and 2009, actions were implemented through the National Action Plan for Children (NAPC) to locate, document and reunite the families of orphaned, lost or abandoned children. It noted the Government's statement in its report to the UN Human Rights Council for the Universal Periodic Review of 11 November 2010, that the impact of HIV/AIDS was a contributing factor to the continuation of child labour in the country (A/HRC/WG.6/10/MOZ/1, paragraph 97). The Committee expressed its concern at the increasing number of children orphaned in Mozambique as a result of HIV/AIDS and urged the Government to strengthen its efforts to ensure that such children are protected from these worst forms of child labour.

The Committee notes the Government's information that in its efforts to enhance the protection of children, particularly orphaned and vulnerable children, the Government has revised two social assistance programmes, the Basic Social Assistance Programme and the National Basic Social Security Strategy (ENSSB) for the period of 2010–14. According to the Government's report, the Basic Social Assistance Programme aims to provide financial assistance to households who have members who are not fit to work or who have orphaned children. Within the context of the ENSSB, programmes prioritizing orphaned and vulnerable children were initiated with a view to extending the granting of direct social support. Moreover, programmes to reintegrate heads of households fostering orphaned children into working life and productive activities have also been established. The Committee further notes that, according to the 2012 Global AIDS Response Progress Report (GARP) of the National AIDS Council, the Government of Mozambique has taken the following steps towards meeting the needs of most vulnerable children in the country:

- the Action Plan for the Reduction of Absolute Poverty (PARPA II) which includes the goal of providing a minimum of three to six identified basic services (health, nutrition, education, psychological support, legal and financial support) to 30 per cent households with orphans and other vulnerable children was initiated;
- a Multi-sectoral Plan for Orphans and Vulnerable Children (PACOV) which addresses the special needs of this growing population was established, and a Multi-sectoral Technical Group for Vulnerable and Orphaned children was established in all 11 provinces and 54 districts;

- in partnership with Save the Children, the Ministry of Women and Coordination of Social Action (MMAS) developed guidelines for the establishment and functioning of child protection committees. Currently 531 such committees have been established to support orphans and other vulnerable children.

The Committee further notes from the GARP report that: (i) an estimated 66,364 children have benefited through the Pre-school Education Programme carried out by the MMAS; (ii) about 22 per cent of the families with orphans received support through the Government initiated programmes; (iii) 212,096 orphans and other vulnerable children received support from UNICEF assisted programmes, and (iv) 237,200 orphans and other vulnerable children received support from the United States Government, during the year 2010. The Committee notes, however, that according to the GARP report, in Mozambique, 12 per cent of children under the age of 18 years are orphans. In 2011, it was estimated that the number of orphans was 936,000, out of which 424,000 were orphans due to AIDS. While appreciating the measures taken by the Government to protect orphans and other vulnerable children, the Committee expresses its *concern* at the number of children orphaned in Mozambique as a result of HIV/AIDS. **Recalling that orphans and other vulnerable children are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to intensify its efforts to ensure that such children are protected 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.**

**The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. In this regard, the Committee reminds the Government that it may avail itself of ILO technical assistance to bring its legislation into conformity with the Convention.**

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

## Namibia

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution or for the production of pornography or for pornographic performances.* The Committee previously observed that the prohibitions related to prostitution contained in national legislation (particularly in the Immorality Act 1988 and the Immoral Practices Act 1980) did not encompass the use, procuring or offering of all persons under the age of 18 for the purpose of prostitution or pornography. It also noted the statement in the Government's report to the Committee on the Rights of the Child (CRC) of 15 September 2011 that the criminal and sexual exploitation of children occurred in the country both through children being prostituted, and through adults taking advantage of needy children by providing basic necessities in return for sex (CRC/C/NAM/2-3, paragraph 226). However, the Committee noted that the draft Child Care and Protection Bill had been developed, and that section 176(1)(a) of this Bill would prohibit the use, procuring or offering of a child for the purpose of commercial sexual exploitation.

The Committee notes the Government's statement that the draft Child Care and Protection Bill is with the legal drafters at the Ministry of Justice. The Government states that after its finalization, it will be tabled before Parliament. **The Committee requests the Government to take the necessary measures to ensure that the draft Child Care and Protection Bill will prohibit the use, procuring and offering of all persons under the age of 18 for prostitution and pornography, and will be adopted without delay. It requests the Government to provide a copy of the Child Care Protection Act, once adopted.**

*Clause (c). Use, procuring or offering of a child for illicit activities.* In its previous comments, the Committee noted that national legislation did not appear to prohibit the use, procuring or offering of a child for illicit activities. It also noted that the 2007 ILO rapid assessment study entitled "Children used by adults to commit crimes (CUBAC) in Namibia" indicated that approximately one third of children involved in crimes had been used by adults to commit such crimes. However, the Committee noted that section 176(1)(b) of the draft Child Care and Protection Bill prohibits the use, procuring or offering of a child for illicit activities, including drug production and trafficking.

The Committee notes, as above, the Government's statement that the draft Child Care and Protection Bill is with legal drafters of the Ministry of Justice, and will be presented to Parliament once finalized. **Recalling that, by virtue of Article 3(c) of the Convention, the use of children by adults for illicit activities, including to commit crimes, is considered to be one of the worst forms of child labour, the Committee urges the Government to take the necessary measures to ensure the adoption of the draft Child Care and Protection Bill in the near future.**

*Article 4(1). Determination of types of hazardous work.* The Committee previously noted that section 3(3)(d) and section 3(4) of the Labour Act prohibits six types of hazardous work for children between the ages of 14 and 18. In addition, the Committee noted the Government's indication that a list of hazardous work (in terms of Conventions Nos 138 and 182) had been developed by the Project Advisory Committee on Child Labour. This list was subsequently submitted to the Labour Advisory Council for its consideration.

The Committee notes the Government's statement that the Labour Advisory Council approved the submitted list without any modifications. The Government also indicates that the Labour Advisory Council recommended the list to the Minister of Labour and Social Welfare for approval, and that once this list is approved by the Minister, the supporting regulations for hazardous work will be developed. **The Committee requests the Government to take the necessary**

*measures to ensure the elaboration and adoption of regulations containing a further determination of prohibited types of hazardous work. It requests the Government to provide a copy of the relevant regulations, once adopted.*

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

## Nepal

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1997)**

*Article 2(1) of the Convention. Scope of application. Children working in the informal economy.* The Committee previously noted that the Child Labour Act of 2000, which prohibits the employment of children below 14 years as labourers (section 3(1)), does not define the terms “employment” and “labourer”. It also noted the Government’s indication that the Act does not adequately cover the informal sector. The Committee further noted the Government’s indication that although labour inspections showed a negligible incidence of child labour in the formal sector, this phenomenon was more likely to be prevalent in the informal sector.

The Committee once again notes the Government’s statement that it is very difficult to enforce the provisions of the Convention in the informal sector due to limited infrastructure and financial resources. The Committee also notes the information in the Report on the Nepal Labour Force Survey (of 2008), produced by the Central Bureau of Statistics, in conjunction with the ILO and United Nations Development Programme (UNDP), that 82 per cent of working children who are under the minimum age are engaged in agricultural occupations, most of whom perform this work outside of a formal labour relationship and on an unpaid basis (page 139). Moreover, 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 Nepal of 1 and 3 February 2012 entitled “Internationally recognized core labour standards in Nepal” that formal employment agreements account for only 10 per cent of all employment relations, so the Child Labour Act is not enforced for 90 per cent of employment relationships. This report further indicates that working children are mainly found performing informal economic activity in quarries and mines, domestic servitude, agriculture and portering. ***Recalling that the Convention applies to all branches of economic activity and covers all types of employment or work, the Committee encourages the Government to take measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children working in the informal economy. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

*Article 3(1) and (2). Minimum age for admission to hazardous work and determination of types of hazardous work.* The Committee previously noted that sections 2(a) and 3(2) of the Child Labour Act prohibit the employment of persons under 16 years of age in any risky job or enterprise listed in the schedule, and that section 43(2) of the Labour Rules, 1993, also prohibits the employment of persons under 16 years on dangerous machines and in operations which are hazardous to their health. The Committee also noted the Government’s statement that the Child Labour (Prohibition and Regulation) Act, 2000, listed different jobs, occupations and work environments that are hazardous and therefore prohibited to children below 16 years. In this respect, the Committee recalled 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.

The Committee notes the Government’s reference to the interim Constitution of 2007, and observes that article 22(5) of the interim Constitution of 2007 prohibits employing a minor in factories, mines or in any other such hazardous work. However, the Committee observes that the term “minor” is not defined in this legislation. In addition, the Committee notes an absence of information in the Government’s report on measures taken to determine the types of hazardous work prohibited to children under the age of 18. ***The Committee therefore requests the Government to provide information on the definition of the term “minor” in article 22(5) of the interim Constitution of 2007. Moreover, recalling that pursuant to 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 take the necessary measures without delay to determine the types of hazardous work which are prohibited for persons under 18 years.***

*Article 3(3). Admission to types of hazardous work from the age of 16 years.* In its previous comments, the Committee reminded the Government that *Article 3(3)* of the Convention only authorizes the employment or work of young persons between the ages of 16 and 18 years in hazardous work under specific conditions, namely 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 that section 32A(1) of the Labour Act (as amended in 2000), states that minors (defined as persons between 16 and 18 pursuant to section 2(i)) shall not be engaged in work without adequate directives about the concerned working areas or vocational training. Section 32A(2) states that provisions shall be as prescribed regarding adequate directives about the concerned working areas or vocational training to be given to minors pursuant to section 32A(1). ***The Committee requests the Government to indicate if provisions have been adopted concerning the required vocational training or instruction for persons between 16 and 18 as a precondition for work. Moreover, the Committee requests the Government to provide information on the measures taken to ensure that persons between 16***

*and 18 years are only permitted to perform hazardous types of work if their health, safety and morals are fully protected.*

*Part V of the report form. Application of the Convention in practice.* Following its previous comments, the Committee notes the Government's statement that the Department of Labour has been making efforts to enforce the provisions of the Convention. The Government indicates that the Ministry of Local Development has begun a child-friendly local governance programme, which has the elimination of child labour as one of its main components. The Committee also notes that an ILO-IPEC project was launched in the country in 2011 in order to support the implementation of Nepal's National Master Plan on the Elimination of Child Labour of 2011–20. The Committee further notes the Government's statement that due to the awareness programmes implemented by the Government through Radio Nepal, there has been a decrease in child labour, as indicated in the Nepal Labour Force Survey. In this regard, the Committee notes the information in the Report on the Nepal Labour Force Survey that the percentage of children between the ages of 5 and 14 who were economically active has declined from 40.9 per cent in 1998–99 to 33.9 per cent in 2008.

Nonetheless, the Committee notes the information in the Report on the Nepal Labour Force Survey that there remain approximately 2,111,000 children between 5 and 14 who are economically active. This Report further indicates that 13.4 per cent of children between the ages of 5 and 9, and 52.7 per cent of children between the ages of 10 and 14, are economically active. In addition, the Committee notes that the Committee on the Elimination of Discrimination Against Women, in its concluding observations of 11 August 2011, expressed concern about the high rate of child labour in the country, particularly among girls between the ages of 8 and 14 (CEDAW/C/NPL/CO/4-5, paragraph 29). ***The Committee therefore expresses its deep concern at the significant number of children under the minimum age who are engaged in child labour in Nepal, and urges the Government to pursue its efforts, including within the framework of the National Master Plan on the Elimination of Child Labour and in collaboration with the ILO-IPEC with child friendly, gender sensitive programming, towards the effective reduction and elimination of child labour. It requests the Government to continue to provide information on the measures taken in this regard, and on the results achieved. It also requests the Government to provide a copy of the National Master Plan on the Elimination of Child Labour, with its next report.***

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)**

*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 sections 2(a) and 16(1) of the Children's Act, 1992 prohibit the use or involvement of children under 16 years in an "immoral profession". Section 16(2) of the Children's Act prohibits taking, allowing someone to take, distributing or exhibiting a photograph for the purpose of engaging a child under 16 in an immoral profession. The Committee noted the Government's indication that appropriate amendments would be made to the existing legislation, including the Children's Act, after the elected constitutional assembly was formed and a fully fledged parliament started to function. The Committee requested the Government to provide a definition of the term "immoral profession" as used in the Children's Act.

The Committee notes the Government's statement in its report to the Committee on the Rights of the Child (CRC) in connection with the optional protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) of April 2008 that section 16 of the Children's Act prohibits the use or involvement of children in pornographic acts (CRC/C/OPSC/NPL/1, paragraph 182). However, the Committee observes that, pursuant to section 2(a) of the Children's Act, this prohibition only applies to children under the age of 16. ***The Committee therefore requests the Government to take the necessary measures to ensure that the Children's Act is amended to prohibit the use, procuring or offering of all children under 18 years of age for the production of pornography, in the very near future, and to provide information in its next report on developments in this regard.***

*Clause (c). Use, procuring or offering of a child for illicit activities. 1. Production and trafficking of drugs.* The Committee previously noted that according to sections 2(a) and 16(4) of the Children's Act, it is prohibited to involve a child under 16 years in the sale, distribution or trafficking of alcohol, narcotics or other drugs. However, the Committee also noted the Government's statement that the Children's Act would be amended in a way consistent with this Convention once a new and fully fledged parliament starts to function. ***Noting once again the absence of information on this point in the Government's report, the Committee urges the Government to take the necessary measures to prohibit the use, procuring or offering of a child under 18 years for illicit activities, particularly the production and distribution of drugs, in accordance with Article 3(c) of the Convention.***

*2. Use of a child for begging.* The Committee previously noted that section 3 of the Begging (Prohibition) Act, 1962 makes it an offence to ask or encourage a child under 16 years to beg in a street, junction or any other place. The Committee also noted the Government's indication that the Begging (Prohibition) Act of 1962 would be amended in a way consistent with this Convention once the new and fully fledged parliament starts to function.

The Committee notes the information in the Government's report to the CRC in connection with the OPSC of April 2008 that there are instances of cross-border child trafficking for, inter alia, the purpose of begging (CRC/C/OPSC/NPL/1, paragraph 71). In this regard, the Committee recalls that the use, procuring or offering of children for illicit activities, including begging, constitutes one of the worst forms of child labour and should therefore be prohibited for all children under 18 years of age. ***The Committee requests the Government to take the necessary measures, in the near future, to***



**ensure that the Begging (Prohibition) Act is amended to prohibit the use, procuring or offering of all persons under 18 years of age.**

*Article 3, clause (d), and Article 4(1). Hazardous work and determination of types of hazardous work.* The Committee previously noted that sections 2(a) and 3 of the Child Labour (Prohibition and Regulation) Act prohibit the employment of children under 16 years in hazardous work or enterprises listed in the schedule. In this regard, the Committee noted the Government's statement that the age of a "child" as mentioned in the above legislation needed to be raised to 18 years in order to make it consistent with the provisions of this Convention. It also noted the Government's indication that appropriate amendments would be made to the national legislation after the elected constitutional assembly was formed.

The Committee notes the Government's reference to the interim Constitution of 2007, article 22(5) of which prohibits employing a minor in factories, mines or in any other such hazardous work, but observes that the term "minor" is not defined in this legislation. Moreover, the Committee notes an absence of information in the Government's report on any measures taken to determine the types of hazardous work prohibited to children under the age of 18. ***The Committee therefore requests the Government to take the necessary measures, in the very near future, to ensure that no person under 18 years of age may be authorized to perform hazardous work, in conformity with Article 3(d) of the Convention. The Committee also requests the Government to take the necessary measures, after consultation with the organizations of employers and workers concerned, to include in the national legislation provisions determining the types of hazardous work to be prohibited to persons below 18 years of age in accordance with Article 3(2) of the Convention. It requests the Government to provide information on the progress made in this regard.***

*Articles 5 and 7. Monitoring mechanisms and penalties.* 1. *Trafficking.* The Committee previously noted that, pursuant to the provisions of the Human Trafficking and Transportation (Control) Act, 2007, any person guilty of the trafficking of children within or outside of the country shall be liable to penalties of fines and imprisonment. The Committee requested the Government to provide information on the application of the Human Trafficking and Transportation (Control) Act, 2007 in practice, including the application of penal sanctions.

The Committee notes the statement in the Government's report that, as Nepal is one of the poorest countries in South Asia, and as it has an open border with India, some types of human trafficking have flourished. The Committee also notes that the Committee on the Elimination of Discrimination against Women, in its concluding observations of 11 August 2011, expressed concern at the lack of effective implementation of the Human Trafficking and Transportation (Control) Act, 2007 (CEDAW/C/NPL/CO/4-5, paragraph 21). Moreover, the Committee notes the Government's statement, in its report to the CRC for the OPSC of April 2008, that despite widely varied data on cross-border and in-country sale and trafficking of children (and women), the magnitude of the problem is high (CRC/C/OPSC/NPL/1, paragraph 68). ***The Committee therefore urges the Government to take immediate measures to strengthen its efforts to combat the trafficking of children under 18 years of age. It requests the Government to provide information on the number of cases of trafficking in children detected and investigated, as well as statistics on the number of prosecutions, convictions and penalties applied to perpetrators. To the extent possible, all information provided should be disaggregated by sex and by age.***

2. *Labour inspectorate.* The Committee previously noted the Government's statement that child labour in the organized sector is very rare. It also noted the Government's indication that, according to the data collected by the Central Children Welfare Committee (CCWC) under the Ministry of Women, Children and Social Welfare, a total of 22,981 cases of worst forms of child labour had been registered from 59 districts. The Committee requested the Government to provide information on the inspections carried out, including in the informal sector and on the number and nature of violations detected with regard to children under the age of 18 years.

The Committee notes the information contained in a report by the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the Trade Policies of Nepal of 1 and 3 February 2012 entitled "Internationally recognized core labour standards in Nepal" that child labour and forced child labour are found in brick kilns, quarries and the textile industry. This ITUC report states that children are found performing mainly in informal economic activity in quarries and mines, domestic servitude, agriculture and portering. This ITUC report further indicates that children work in cramped places for long hours, night shifts, deal with chemicals and pesticides, operate dangerous machinery and carry heavy loads.

The Committee also notes the information in the Government's report that 1,200 inspections by factory inspectors were carried out between 2009 and 2011. The Government indicates that no child labour was found in the formal sector through these inspections. The Committee further notes the Government's statement that the practices of the worst forms of child labour in domestic work, in mines, in the carpet industry and in rag picking remain a matter of great concern for the Government. ***The Committee therefore urges the Government to intensify its efforts, including through strengthening the capacity and expanding the reach of the labour inspectorate, to combat the worst forms of child labour in the informal sector. It also requests the Government to provide any data collected by the CCWC regarding the number of cases registered related to the worst forms of child labour with its next report.***

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

## Netherlands

### Aruba

#### **Minimum Age Convention, 1973 (No. 138)**

*Article 2(1) and (3) of the Convention.* 1. *Age of completion of compulsory schooling.* In its previous comments, the Committee observed that there was no specified age of completion of compulsory schooling in Aruba. However, the Committee noted that a State Ordinance on Compulsory Education had been developed. The Committee urged the Government to take measures to adopt the State Ordinance on Compulsory Education, and to ensure that this Ordinance was in conformity with the Convention.

The Committee notes with *interest* the Government's indication that the State Ordinance on Compulsory Education (AB 2011 No. 82) was signed into law on 23 December 2011. The Committee notes the Government's statement that pursuant to section 2 of the State Ordinance, education is compulsory for children between the ages of 4 and 16. The Government also indicates that, under this Ordinance, parents who do not comply with their obligation to ensure that their children attend school may be fined. The Government further indicates that it is taking measures to establish the Bureau on Compulsory Education, which will be responsible for enforcing this new Ordinance, as well as raising awareness among schools and parents on its provisions. ***The Committee requests the Government to provide a copy of the State Ordinance on Compulsory Education (AB 2011 No. 82), with its next report.***

2. *Minimum age for admission to employment or work.* Referring to its previous comments, in which it noted that the Labour Ordinance of Aruba establishes a minimum age for admission to work of 14 years (pursuant to sections 4(d) and 15), the Committee draws the Government's attention to *Article 2(3)* of the Convention, which states that the minimum age specified shall not be lower than the age of completion of compulsory education. Referring to paragraph 370 of its 2012 General Survey on the fundamental Conventions concerning rights at work, the Committee recalls that if the minimum age for admission to work or employment is lower than the school-leaving age, children may be encouraged to leave school, as they are legally authorized to work. ***The Committee therefore requests the Government to take measures to raise the minimum age of for admission to employment from 14 to 16 years of age, in order to link this age with the age of completion of compulsory schooling established in the State Ordinance on Compulsory Education.***

*Article 3(2). Determination of types of hazardous work.* In its previous comments, the Committee noted that section 17(1) of the Labour Ordinance provides that it is prohibited to engage juvenile persons (persons between 14 and 18 years of age) in night work or work of a hazardous nature, which is to be described by a State decree. The Committee noted the Government's indication that the Committee for the Modernization of Labour Legislation (CMLL) had proposed to eliminate the need for the formal requirement of a decree to determine the types of hazardous work, and to allow the Director of the Labour Department to determine which types of work would fall under this category through official labour policy, which would then be published in the *State Gazette*.

In this regard, the Committee notes the Government's indication that the proposal to allow the Director of the Labour Department to determine the types of hazardous work is with the Department of Legislation for technical evaluation and revision. The Government indicates that once this proposal approved, the Labour Department will prepare a policy concerning hazardous work. In this connection, the Committee once again recalls 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 urges the Government to take the necessary measures to ensure that, following the approval of the Department of Legislation, the Director of the Labour Department determines the types of hazardous work at the earliest possible date. It requests the Government to provide information on progress made in this regard, in its next report.***

*Article 6. Vocational training and apprenticeship.* The Committee previously noted the Government's indication that the state decree provided for under section 16(a) of the Labour Ordinance allows exemptions for certain tasks which are necessary for the learning of a trade or profession, and can be done by children of 12 years or over who have completed the sixth class of primary school. The Committee also noted the Government's indication that the CMLL had proposed to eliminate the need for the formal requirement of a decree to specify the employment permitted for vocational education or technical training purposes, and to allow the Director of the Labour Department to do so through official labour policy.

The Committee notes the Government's indication that a proposal is under consideration to provide that the specification of the types of employment permitted for technical training is within the competency of the Director of the Labour Department. The Government indicates that once this proposal is approved, the Labour Department will prepare the corresponding policy. ***The Committee expresses the firm hope that, following the approval from the Department of Legislation, the Government will take the necessary measures to ensure that the Director of the Labour Department specifies the employment permitted for vocational education or technical training purposes under section 16(a). It requests the Government to continue to provide information on any progress made in this regard.***

*Article 7. Light work.* In its previous comments, the Committee noted the Government's indication that the state decree provided for under section 16(b) of the Labour Ordinance to specify certain tasks which can be carried out by children of 12 years of age and above, who have completed the sixth class of primary school, had not yet been addressed in the CMLL. The CMLL had, however, proposed to allow the Director of the Labour Department to determine the types of light work through official labour policy, which would then only need to be published officially in the *State Gazette*.

The Committee notes the Government's statement that once the Department of Legislation approves the proposal to permit the Director of the Labour Department to determine the types of light work through official labour policy, the Labour Department will begin to prepare such a policy. In this regard, the Committee once again recalls that *Article 7(3)* of the Convention requires that the competent authority determine the activities allowed as light work in which young persons between 13 and 15 years of age may be permitted to participate, and to prescribe the number of hours of work and the conditions of employment or work. ***The Committee expresses the firm hope that the Director of the Labour Department will determine the types of light work permitted to children of 13 years and above, provided for under section 16(b) of the Labour Ordinance in the near future. The Committee requests the Government to continue to provide information on developments in this regard.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted the Government's indication that control and enforcement of the labour legislation by the labour inspectors continues to be weak due to regulatory and financial challenges.

The Committee notes the Government's statement that labour inspections did not reveal any infractions related to provisions in national legislation implementing the Convention. The Committee also notes the Government's statement that there is no new information available on the application of the Convention in practice. ***The Committee encourages the Government to take measures to ensure that sufficient data on the situation of working children in Aruba is made available, such as information on the number of children and young persons working below the minimum age and the nature, scope and trends of their work. It requests the Government to provide this information, when it becomes available.***

***The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. It requests the Government to provide any information on progress made in this regard and invites it to consider seeking technical assistance from the ILO.***

## New Zealand

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report. It also notes the comments made by Business New Zealand, as well as the comments made by the New Zealand Council of Trade Unions (NZCTU) concerning the application of the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), and the Government's reply thereto.

*Article 3(d) of the Convention. Hazardous work. Minimum age for admission to hazardous work.* The Committee previously noted that, by virtue of section 54(d) of the Health and Safety in Employment Regulations of 1995 (HSE Regulations), hazardous work was prohibited for children under 15 years of age, but was not prohibited for all children under 18 years of age, as specified under *Article 3(d)* of the Convention. The Committee also noted the allegation of the NZCTU that in 2006, about 300 children under 15 years visited their doctor for a work-related injury, and that accident compensation and rehabilitation assistance was provided to between 1,000–2,000 children between the ages of 15 and 19. In this regard, the Government stated that while it shared the concerns raised by the NZCTU with regard to workplace injuries of children and young persons, which in some cases proved fatal, legislative protections existed to protect young persons. The Government stated that these legislative protections generally ensure that young people are not exposed to hazardous work and that employers have an obligation to ensure a healthy and safe working environment, as well as duties related to training and supervision. The Committee also noted Business New Zealand's statement that the existing legislative framework provides effective age thresholds for entry into work, particularly when read together with the obligation on all employers to provide their employees of whatever age, with a safe and healthy working environment.

However, the Committee noted the information in a Department of Labour (DoL) research paper entitled "School children in Paid Employment – A summary of research findings" of September 2010 (DoL Report of 2010) according to which employers are not effective in raising school children's awareness of hazards, nor their rights, in the workplace as expected under the Health and Safety in Employment Act. The DoL Report of 2010 referenced a study which found that a third of secondary-school students indicated that their employers had not provided them with any information about workplace hazards. Moreover, this DoL Report of 2010 indicated that inadequacies in training and supervision of children in workplaces were also frequently reported. Additionally, the DoL Report of 2010 indicated that injuries are a common and occasionally serious occurrence in school children's workplaces, with one sixth of secondary school students in part-time work reportedly being injured at work in the previous year. The DoL Report of 2010 indicated that children aged 15–16 were more likely to have had an injury than children aged 13–14, and that 20 per cent of working children of 16 years of age had had an employment injury. The Committee further noted that the Committee on the Rights of the Child, in its concluding observations of 11 April 2011, expressed concern that children between the ages of 15 and 18 are allowed to work in dangerous workplaces (CRC/C/NZL/CO/3-4, paragraph 41).

The Committee notes the statement by Business New Zealand that, in the New Zealand context, it is required that work hazards be eliminated, isolated or minimized, as appropriate. Business New Zealand states that employers must provide training and supervision for anyone engaging in any activity capable of being considered hazardous, as well as protective clothing and equipment, regardless of the age of the employee, but with specific prohibitions applying with respect to young persons under the age of 16. Business New Zealand further states that work for children that is excessively difficult or hazardous is neither condoned nor encouraged in the country.

The Committee notes the statement by the NZCTU, in its comments submitted concerning the application of Convention (Revised) No. 59, that in the country there is little attention given to the nature of work undertaken by children and young people working before or after school, on weekends or during school holidays, nor any direct provisions to ensure that children and young people are not exploited or exposed to unsafe work practices or workplaces. The NZCTU states that while the Government provides some information on the rights of young workers on the website of the Department of Labour, it is up to young people, or their families, to act on this information. The NZCTU also states that accidents records indicated that two 17 year old workers were employed in mines in 2010, and one of the fatalities of a mine disaster in 2010 was a child of 17 years of age. The NZCTU further references a study which found that a quarter of students working in manufacturing report injuries. Moreover, the NZCTU indicates that according to information from the Accident Compensation Corporation, the number of injuries reported by children aged 10–14 in industry was 77 in 2008–09, 72 in 2009–10 and 58 in 2010–11. For the age group 15–19, the number of injuries reported was 4,373 in 2008–09, 2,784 in 2009–10 and 2,548 in 2010–11. However, the NZCTU states that records of injury claims is a poor proxy and that research indicated that young workers were discouraged by employers from reporting their injuries.

The Committee notes the Government's statement, in its reply to the comments of the NZCTU, that the Ministry of Labour is taking a strategic approach to reducing work-related injuries and fatalities under a National Action Agenda, released in March 2011, which highlights the five sectors which have the highest risks of ill health, injury or death. The Government states that each of these five sectors has a three-year Sector Action Plan in place. Under the Manufacturing Action Plan, a priority for action is at-risk groups, which include youth (aged 15–24), who are identified as needing more training and supervision. The Plan aims to deliver effective training and promote safe work practices to youth through targeted programmes. The Government states that it is not aware of a problem that the existing regulatory framework is being ignored, and that it considers the current legislation to be sufficient. Therefore, its action will focus on better training and awareness on safety issues, not non-observance. In this regard, the Committee further notes the Government's statement that it considers that existing policy and legislative frameworks provide effective age thresholds for entry into work to ensure that children only engage in safe work. The Government states that while the specific legal restriction on types of work are only applicable to children under the age of 15, children between the age of 16 and 18 are protected by the general requirements of workplace health and safety legislation, which provides protection to all workers, regardless of age. The Government also states that it considers that the conditions of Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), are met by the general duty on employers to ensure a safe working environment and to prevent exposure to hazards and by the duty on employers to ensure that employees have sufficient training and experience so that the work they are employed to do is not likely to cause them harm.

However, the Committee notes the information provided in the Government's report concerning the number of claims for work-related injuries by persons 18 and under, and observes that the number of work-related injuries increased significantly with the age of the children; 724 more children aged 16 years made claims for work-related accidents than those aged 15, and 1,347 more children aged 17 made claims than those aged 16. Additionally the Committee notes the Government's statement that the DoL Report of 2010 on New Zealand school children in paid employment summarizes the current state of knowledge about the risks that children are exposed to in employment. In this regard, the Committee recalls that the DoL Report of 2010 indicated that the current legislative protections, which rely on the employer to protect children under the age of 18 from workplace hazards, do not appear in practice to be fully and effectively protecting children from hazardous work.

Therefore, the Committee must once again express its *serious concern* that children between 15 and 18 years of age are allowed, in law and in practice, to perform the types of work which are clearly hazardous, as previously acknowledged by the Government and supported by the Department of Labour's research. The Committee must therefore emphasize 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 children *under 18*, constitutes 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 ensure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee also recalls that Paragraph 4 of Recommendation No. 190 addresses the possibility of authorizing the employment or work of young persons as from the *age of 16* under strict conditions that their health and safety be protected and that they receive adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee therefore once again urges the Government to take immediate and effective measures to comply with Article 1 of the Convention, read with Article 3(d), to prohibit children under 18 years of age from engaging in hazardous and dangerous work. However, where such work is performed by young persons between 16 and 18 years of age, the Committee urges the Government to take the necessary measures to ensure that such work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that the health and safety of such young***

*persons be protected and that they receive adequate specific instruction or vocational training in that activity. The Committee requests the Government to provide information on the progress made in this regard in its next report.*

*Article 4(1) and (3). Periodic revision of the types of hazardous activities prohibited to persons under 18 years of age.* The Committee previously noted the Government's indication that children under 18 years cannot work in any restricted areas of licensed premises, such as bars, licensed restaurants or clubs. However, it also noted the Government's statement that, pursuant to sections 54–58 of the Health and Safety in Employment (HSE) Regulations, only employees under 15 years of age are prohibited from working in a number of high-hazard workplaces, such as in construction, logging and tree-felling operations, in work where goods are being manufactured and prepared for sale, in work with any machinery, lifting heavy loads or performing other tasks likely to be injurious to the employee's health, night work and driving or riding any tractor or heavy vehicles. The Committee also noted the information from the Government's report that research indicated that children represent a significant proportion of farm injuries, with nearly one fifth of all injuries on farms occurring involving children aged 15 and younger. The Government indicated that the majority of child fatalities occurred on farms, most typically with regard to children aged 10–14 years riding in vehicles to shift stock, and that this was being addressed through a safety campaign. The Committee further noted that the DoL Report of 2010 identified the construction, agriculture and hospitality industries as posing the most risk to young workers. The DoL Report of 2010 also identified some types of work which are more dangerous to young persons: by volume, working in shops (including petrol stations and supermarkets) and working in restaurants, takeaway outlets and other eateries. These types of activities were the largest contributors to workplace injuries and accounted for 60 per cent of injuries to schoolchildren in regular part-time work. Noting that the DoL Report of 2010 identified the sectors posing the most risk to young workers (construction, agriculture and hospitality), as well as the types of activities which are most injurious, the Committee reminded the Government that, pursuant to *Article 4(1) and (3)* 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, and that this list shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

The Committee notes the Government's statement that no amendments to the Regulations are currently being considered, but that any proposed change would entail a thorough consultation with a wide range of stakeholders, including employers' and workers' organizations. ***The Committee requests the Government to continue to provide information on any measures taken or envisaged to undertake a periodic review of the list of types of hazardous work, as provided for in Article 4(3) of the Convention, including measures to regulate the types of hazardous work identified in the DoL Report of 2010, such as work in the construction, agriculture and hospitality industries.***

*Article 5 and Parts IV and V of the report form. Monitoring mechanisms and application of the Convention in practice.* The Committee previously noted the Government's statement that the Department of Labour was continuing to investigate workplace practices relating to persons between 16 and 18 years of age engaged in hazardous work. However, the Committee noted the Government's statement that there had been no prosecutions in respect of the prohibition contained in the HSE Act or Regulations on engaging a young person under the age of 15 in hazardous work, despite the information in the DoL Report of 2010 that 17 per cent of students in part-time work under the age of 15 had reported a work-related injury in the previous year, some of which were serious injuries. The Committee requested the Government to provide information on the results of the investigations carried out by the Department of Labour on workplace practices related to persons between 15 and 18 years engaged in hazardous work.

The Committee notes the Government's statement that no information is available in this regard, as the collection of age-related data is not considered to be sufficiently complete to draw reliable conclusions. However, the Committee also notes the information in the Government's report concerning the number of claims for work-related injuries for the year 2009 (the most recent data available). In this regard, the Committee notes that there were 7,391 claims made for work-related injuries by persons 18 and under in 2009, including 992 claims made by children aged 16 and 2,339 claims made by children aged 17. The Committee further notes the Government's statement that further research is being undertaken as a part of the Youth 2000 project. A health and well-being survey of secondary-school students is currently under way across 100 schools in the country (following similar surveys conducted in 2001 and 2007). The Government indicates that this survey will provide updated information on the types of paid work that school-aged children are involved in, and will include new questions to increase the understanding of their working conditions and health and safety outcomes. ***Noting the significant number of work-related injuries claims made by persons under 18, the Committee requests the Government to provide information regarding subsequent investigations carried out concerning these accidents, violations detected, prosecutions and penalties applied, with its next report. It also requests the Government to provide information from the survey undertaken from the Youth 2000 project concerning work performed by children under 18, particularly with regard to working conditions and health and safety outcomes. To the extent possible, all information provided should be disaggregated by age and sex.***

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

## Nicaragua

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (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:

The Committee takes note of the Government's report. It notes with interest the adoption of General Act No. 618 on occupational health and safety and Decree No. 96-2007 issuing the regulations thereto, and that both contain provisions on medical examination. ***It requests the Government to provide information on the following point.***

*Article 7, paragraph 2(a), of the Convention. Supervision of the application of the system of medical examination for fitness to work to children engaged on their own or their parents' account.* In its previous comments, the Committee noted with regret that the national legislation contains no provisions to give effect to *Article 7, paragraph 2(a)*, of the Convention, and asked the Government to take the necessary steps to ensure compliance with the Convention on this point. It notes that the Government's report contains no information on the matter. It again points out that pursuant to this provision of the Convention, national laws and regulations must determine the measures of identification to be adopted for ensuring the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried on in the streets or places to which the public have access. ***The Committee once again urges the Government to take the necessary steps to ensure that the national legislation provides for the organization of such examinations, in order to give effect to this article of the Convention.***

***With regard to the other provisions of the Convention, the Government is asked to refer to the Committee's comments under the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77).***

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

## Niger

### **Minimum Age Convention, 1973 (No. 138) (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 communication of the International Trade Union Confederation (ITUC), of 31 August 2011, and the Government's reply to the ITUC's allegations, received on 14 November 2011.

*Article 2(1) of the Convention. Scope of application.* The Committee noted previously that the Labour Code does not apply to types of employment or work performed by children outside an enterprise, such as work performed by children on their own account. It noted the Government's indication that the broadening of 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. In that respect, 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.

The Committee notes the Government's indication that a national survey of the informal economy will be organized by the National Statistical Institute (INS) in 2012 which will make it possible to measure the extent of the phenomenon of children working on their own account and will enable the labour administration to intervene more effectively in this field. ***The Committee requests the Government to take the necessary measures to ensure that the INS survey of the informal economy is completed effectively in the very near future and that discussions on this matter are held between the Ministries concerned. The Committee once again requests the Government to provide information on the progress achieved in this respect.***

*Article 2(3). Compulsory schooling.* In its previous comments, the Committee noted that the Ten-year Educational Development Programme (PDDE), drawn up in 2002, aimed at achieving an 80 per cent enrolment rate in primary school by 2012 and 84 per cent by 2015, with special emphasis on narrowing the gap between boys and girls.

However, the Committee noted that, in its concluding observations of 18 June 2009 (CRC/C/NER/CO/2, paragraph 66), the Committee on the Rights of the Child, 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 also observed 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.

The Committee notes the Government's indication that it is continuing its ceaseless efforts in the field of education and that encouraging results have already been obtained in that respect. As a result, according to the Government, the growth in the gross school attendance rate in primary school, which was 57.1 per cent (47.7 per cent for girls and 66.7 per cent for boys) in 2006–07, rose to 67.8 per cent (58.6 per cent for girls and 77 per cent for boys) in 2008–09. However, the Committee notes that, according to the National Survey on Child Labour in Niger (ENTE) of 2009, 43.2 per cent of children between the ages of 5 and 11 years and 62.5 per cent of children between the ages of 12 and 13 years in Niger are engaged in types of child labour to be abolished, at an age when they are supposed to be at school, as school attendance is compulsory up to 14 years. According to the ENTE, 22.8 per cent of children between the ages of 7 and 11 years and 23 per cent of children aged 12 and 13 years do not attend school because they consider that education is not useful, while 18.7 per cent of children between the ages of 7 and 11 years and 15 per cent of children aged 12 and 13 do not attend school because they assist with household work. Despite the efforts made by the Government, the Committee expresses its ***concern*** at the persistence of the low rates of school attendance. It observes that poverty is one of the primary causes of child labour and, when combined with a defective education system, 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 intensify its efforts to improve the functioning of the education system and to take measures to enable children to attend compulsory basic education. It also requests the Government to continue taking***

*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 3(3). Authorization to employ young persons in hazardous work from the age of 16 years.* In its previous comments, the Committee 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 have been established in enterprises and that they are responsible for training and awareness raising on safety. The Committee observed that these committees do 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 needs 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 has 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.

Once again noting the absence of information in the Government's report, the Committee once again 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 in hazardous types of work only on the condition that their health, safety and morals are fully protected. **Observing that this matter has been raised on many occasions, the Committee once again 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 and 18 years do not jeopardize their health and safety. It once again requests the Government to provide information on this subject in its next report.**

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted the Government's indication that studies were being conducted in the country, including the ENTE undertaken by the INS in collaboration with ILO-IPEC and in partnership with a consortium of NGOs, and that the Government would provide the findings of the ENTE when they were published.

The Committee notes the allegations by the ITUC that 46 per cent of children of school age are engaged in work under arduous conditions and perform types of work which exceed their physical capacities. Children also frequently work with their families in rural areas and participate in work in fields, crushing cereals, tending animals, seeking firewood and water.

The Committee notes the Government's indication in its reply to the ITUC's allegations that the rate of 46 per cent alleged by the ITUC is only an approximate figure.

However the Committee notes that, according to the findings of the ENTE, children who were economically active in 2009 represented 50.4 per cent of children between the ages of 5 and 17 years and that the phenomenon of child labour is more significant in rural than in urban areas. It also shows that in Niger girls are much more engaged in work than boys. Furthermore, 83.4 per cent of the children aged between 5 and 17 years who are economically active, that is 1,604,236 children, are engaged in types of work to be abolished (i.e. all types of work that are prohibited by the Convention). Of these, 1,187,840 children are involved in hazardous types of work. In other words, nearly two out of three children (61.8 per cent) between the ages of 5 and 17 who are economically active perform their work under hazardous conditions, with the rate being 63.6 per cent of children between the ages of 5 and 11 years and 57.9 per cent of children aged 12 and 13. The findings of the ENTE also indicate that children engaged in the types of work to be abolished mostly work in domestic service (65.5 per cent of children between the ages of 5 and 11 years and 44.5 per cent of children aged 12 and 13), trade (16.7 per cent of children between the ages of 5 and 11 years and 21.7 of children aged 12 and 13), agriculture (12.8 per cent of children between the ages of 5 and 11 years and 18.3 per cent of children aged 12 and 13) and industry (3.8 per cent of children between the ages of 5 and 11 years and 6.2 per cent of children aged 12 and 13). The Committee expresses its deep concern at the high number of children engaged in work in Niger who are below the minimum age for admission to employment and work, and that the significant proportion of these children who work under hazardous conditions. **It strongly encourages the Government to intensify its efforts to improve the situation with regard to child labour in the country and requests it to continue providing information in its next report on the application of the Convention in practice, including extracts from the reports of the labour inspection services indicating the number and nature of the contraventions reported and the penalties applied. It requests the Government to provide statistical data in its next report disaggregated by sex and age group, on the nature, extent and trends of child labour and work by young persons under the minimum age specified by the Government when ratifying the Convention.**

*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:

The Committee notes the communication of the International Trade Union Confederation (ITUC) of 31 August 2011, and the Government's reply to the ITUC's allegations received on 14 November 2011.

*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 comments of the ITUC reporting the existence in the country of the internal trafficking of girls 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 high-level fact-finding mission (the mission), which visited Niger from 10 to 20 January 2006 at the request of the Conference Committee in June 2005, "Niger is certainly a *transit country* since its geographical location makes it a hub for trade between North Africa and sub-Saharan Africa," and that "Niger is both a *country of origin* and a *country of destination* for human trafficking, including the trafficking of children." The Committee noted that, when examining the second periodic report submitted by Niger on 20 November 2008 (CRC/C/NER/2, paragraphs 433–437), the Committee on the Rights of the Child (CRC) observed 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 noted the Government's indication that a National Plan to Combat Child Trafficking had been drawn up and approved. It also noted that a Bill for the prevention, repression and

punishment of trafficking in Niger had been drafted by the Niger Association for the Defence of Human Rights, but that the Bill on trafficking had still not been adopted by Parliament, and that accordingly the legal void persisted in that respect.

The Committee notes that, according to a report on trafficking of persons of 2011 (the 2011 trafficking report), available on the website of the United Nations High Commissioner for Refugees, the Government appears to have adopted Ordinance No. 2010-86 to combat the trafficking of persons in December 2010, which consists of comprehensive legislation prohibiting all forms of sale and trafficking and establishing sentences of imprisonment of between ten and 30 years in cases where the victim is a child. However, the Committee notes the Government's indication that the National Plan of Action to Combat Child Trafficking has still not been adopted. **The Committee requests the Government to provide information on the application of Ordinance No. 2010-86 to combat trafficking of persons in practice, including statistics on the number and nature of the violations reported, investigations conducted, prosecutions and convictions obtained, and the penal sanctions applied. The Committee requests the Government to provide a copy of this Ordinance with its next report. The Committee also urges the Government to take the necessary measures to ensure the adoption of the National Plan of Action to Combat Child Trafficking as soon as possible.**

2. *Forced or compulsory labour. Begging.* The Committee noted previously the indication by 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 the existence of begging for purely economic ends had been 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 though 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, according to the information gathered by the mission, this form of begging seemed to be very much on the increase.

The Committee noted previously 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 Minister 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 persons engaging in begging or using children for begging for purely economic ends. In this respect, the Committee noted the Government's indications that there had been some cases of the arrest of *marabouts* presumed to use children for purely economic ends. However, the Government indicated that in general they are released for lack of legal proof of their guilt.

The Committee notes the Government's indication that Niger has undertaken awareness-raising campaigns with a view to changing attitudes with the support of NGOs and development partners, including UNICEF. However, the Committee notes with concern the Government's indication once again in its report that *marabouts* who have been arrested for using children for purely economic ends have been released for lack of legal proof of their guilt. The Committee, therefore, once again 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 once again 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 the 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 thorough investigations and robust prosecutions of marabouts who use children under 18 years of age for purely economic ends are carried out and that sufficiently effective and dissuasive sanctions are applied to them. In this respect, the Committee requests the Government to take the necessary measures to reinforce the capacities of law enforcement agencies. The Committee also requests the Government to take effective and time-bound measures to prevent children under 18 years of age from becoming victims of forced or compulsory labour, such as begging, and to identify child talibés who are compelled to engage in begging, remove them 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 that section 152 of Decree No. 67-126/MFP/T of 7 September 1967 prohibits the employment of children in underground work in mines. However, it noted 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, that young children accompany their parents to informal sites 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 had issued a circular strictly prohibiting the employment of children in mines and quarries in 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. However, the Committee noted the Government's indication that no conviction had yet been handed down in this respect. It further noted that the review 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 noted the Government's indication that the list of hazardous types of work was drawn up under the responsibility of the Ministry of Labour, in collaboration with the technical ministries and the employers' and workers' organizations concerned.

The Committee notes the Government's indication that the list of hazardous types of work has been reviewed and improved by the Ministry of Labour, in collaboration with the technical ministries and employers' and workers' organizations. The Government adds that it will provide the Office with a copy of this list when it has been adopted. **Expressing the hope that the list of hazardous types of work will extend the protection afforded by the Convention to children working in mines in the informal sector who are obliged to engage in hazardous types of work, the Committee urges the Government to take the necessary measures for the adoption of this list in the very near future. It therefore requests the Government to provide a copy of the amended list of hazardous types of work with its next report. It also urges the Government to take immediate measures to ensure the effective application of the national legislation for the protection of children against underground work in mines.**

*Article 5. Monitoring mechanisms. Labour inspection.* In its previous comments, the Committee noted the indication by the mission in its report 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 noted the Government's indication that it was making every effort to ensure that the audit was carried out in the near future.

The Committee notes the allegations of the ITUC that the inadequacy of resources means that the labour inspection services are very ineffective and that no inspections on child labour were carried out in 2010.

The Committee notes the Government's indication in reply to the ITUC's allegations that the labour inspection services have lacked resources for a long time, but that the Government has made significant efforts in 2011 to provide them with sufficient resources, and that these efforts will continue so that they are able to discharge effectively the duties entrusted to them.

The Committee notes that, in its report provided to the Office under the Labour Inspection Convention, 1947 (No. 81), the Government once again agrees to the audit being carried out. However, it notes with concern that the audit has still not been undertaken. **The Committee, therefore, urges the Government to take the necessary measures to reinforce and adapt the capacities of the labour inspection services so as to ensure better supervision of children under 18 years of age who are engaged in the worst forms of child labour, including the implementation of the mission's recommendation. It once again requests the Government to provide information in this respect in its next report.**

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour.* 1. *Access to free basic education.* In its previous comments, the Committee noted from the mission report 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". 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". With regard to Koranic schools, the Committee noted that, in the context of the Franco-Arab education support project, measures had been taken for the restructuring of these schools. The Committee also noted that the Ten-year Educational Development Programme (PDDE), drawn up in 2002, aims to achieve an 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 noted that, in its concluding observations of 18 June 2009, the CRC expressed concern at the poor quality of the education system, the high drop-out rate and the weak gender equity in education (CRC/C/NER/CO/2, paragraph 66).

The Committee notes the Government's indication that several actions have been taken to prevent the engagement of children in the worst forms of child labour, including their school attendance. In this respect, the Government indicates that programmes of action have resulted, among other outcomes, in the enrolment in school of 922 children, including 440 girls in Komabangou, with a view to preventing them from becoming engaged in the worst forms of child labour. It also notes the school enrolment of 1,273 children in M'Banga; the support for the recruitment of teachers for primary schools in M'Banga, Komabangou and 16 satellite villages; and the implementation of the support project for the school enrolment of children and young school drop-outs in the rural community of Makalondi.

However, the Committee notes that, according to the National Survey of Child Labour in Niger of 2009 (ENTE), only 39 per cent of girls between the ages of 7 and 17 years engaged in a type of work that is to be abolished attend school, compared with 47 per cent of boys. Furthermore, the proportion of boys between the ages of 7 and 11 years who attend school is 56 per cent, compared with 48 per cent for boys aged 12 and 13 years, and 24 per cent for the 14–17-year age group. Among girls, these proportions are respectively 46.4 per cent, 28 per cent and 13 per cent. The ENTE also indicates that, among children engaged in forms of work that are to be abolished, 57.2 per cent do not attend school. The failure to attend school is of greater concern among children between the ages of 14 and 17 years who are engaged in hazardous types of work, 80.9 per cent of whom do not attend school. With regard to school drop-outs, 21.4 per cent of children between the ages of 7 and 17 years engaged in types of work that are to be abolished have dropped out of school, out of which 36.5 per cent of children between the ages of 14 and 17 years are engaged in hazardous types of work. The Committee therefore expresses its deep concern at the school attendance rates and the school drop-out rates of children who are compelled to work. **Accordingly, considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to improve the operation of the educational system, taking into account the special situation of girls. In this respect, it also requests the Government to ensure an increase in school enrolment rates and a reduction in school drop-out rates, and to adopt other measures for the integration of Koranic schools into the national educational 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 noted previously the recommendation made by the mission in its report that specific measures should be taken "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 among those involved in combating child labour, and particularly its worst forms, including political decision-makers, employers, community leaders and traditional chiefs, police officers, magistrates, current or potential working children, parents, teachers, students and the public in general with regard to the problem of child labour.

The Committee notes the Government's indication that the awareness-raising campaigns have succeeded in raising the awareness of the actors concerned with regard to the danger represented by this phenomenon. The Government adds that it is continuing awareness-raising activities, including for the population in general, with a view to changing attitudes. **The Committee once again requests the Government to provide detailed information on the awareness-raising activities undertaken for traditional chiefs, civil society and elected local officials, and on their impact in terms of the number of children who have been prevented from begging for purely economic ends by certain marabouts.**

*Clause (b). Necessary direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* In its previous comments, the Committee noted the results of the implementation of the ILO-IPEC project for the prevention and elimination of child labour in artisanal gold mining in West Africa. It also noted that the measures for the social integration of victims of the worst forms of child labour removed from gold mines are provided free of charge by national associations and NGOs, with the support of technical ministries and partners, such as UNICEF.

The Committee notes the ITUC's allegations that the use of children in gold, salt and gypsum mines and other forms of extraction persists. The ITUC indicates that these children have to work under deplorable conditions, with inadequate ventilation, the risk of rock falls and a lack of light, and that they are exposed to the consumption of alcohol and drugs.

The Committee notes the Government's indication that the ILO-IPEC project has come to an end in Niger. The Government adds that, despite this, the schools built in the context of the project continue to enrol a significant number of students. ***The Committee requests the Government to provide information on the number of children who are, in practice, removed from artisanal gold mines and then rehabilitated and socially integrated, particularly in schools built for that purpose. Furthermore, noting that the ILO-IPEC project has come to an end, the Committee strongly encourages the Government to continue taking measures to remove children under 18 years of age from these mines and for their rehabilitation and social integration. It requests the Government to provide information on the progress achieved in this respect.***

***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. Following the implementation of these various cooperation agreements to combat trafficking in children, Niger has established 30 vigilance committees and widespread joint mobile brigades on all national frontiers. The Government added that child victims of trafficking have been intercepted in frontier areas. However, the Committee noted with deep concern the Government's indication that those presumed guilty had been released by the police for lack of legal proof.

The Committee notes the Government's indication that no new cases of trafficking of children have been recorded since 2009. However, according to the 2011 trafficking report, the Government assisted in the repatriation of 89 child victims of trafficking to Mali, Nigeria, Burkina Faso, Benin, Cameroon and Liberia, and the return to their villages from Niger. ***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 once again 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 the ENTE had already been undertaken by the National Institute of Statistics and that the findings would be provided to the Office when they were published.

The Committee notes that, according to the findings of the ENTE, 83.4 per cent of economically active children between the ages of 5 and 17 years, or 1,604,236 children, are engaged in types of work that are to be abolished. Of these, 1,187,840 children are involved in hazardous types of work and, as a result, 74 per cent of children between the ages of 5 and 17 years engaged in types of work that are to be abolished do so under hazardous conditions. The gender distribution of children engaged in hazardous types of work shows that girls (31.2 per cent) and boys (31.1 per cent) are involved almost in the same proportions. The Committee also observes that children in rural areas (36.6 per cent) are more exposed than those living in urban centres (18.2 per cent) and in Niamey (7.5 per cent). ***Expressing its deep concern at the situation of children under 18 years of age engaged in the worst forms of child labour, the Committee urges the Government to renew its efforts to ensure the protection of children from these forms of labour in practice, and particularly from hazardous types of work. It requests the Government to continue providing information on the progress achieved 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.***

## Nigeria

### **Minimum Age (Underground Work) Convention, 1965 (No. 123) (ratification: 1974)**

***Article 4(5) of the Convention. Employer's obligation to make available to the workers' representatives, at their request, the list of persons employed in work underground.*** The Committee had noted that under section 62 of the Labour Act, every employer is required to keep a register of all young persons in his or her 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. It had 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 notes the Government's statement that the various state offices of the Federal Ministry of Labour and Productivity have been directed to inform the employers to release, on demand, the register of all young persons in their employment (kept pursuant to section 62 of the Labour Act) to the trade union, in compliance with section 5(6) of the Labour Act, Cap L1, LFN 2004. The Committee notes, however, that section 5(6) of the Labour Act, Cap L1, LFN 2004 relates to the list of employees from whom deductions for overpayment of wages were made, which shall be made available by employers when making payment to a trade union. The Committee observes that for a number of years, it had been requesting the Government to indicate the 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 as well as dates at which they were employed or worked underground in the undertaking for the first time. ***The Committee therefore requests the Government to indicate the measures taken or envisaged to bring the national legislation into conformity with the provisions of Article 4(5) of the Convention.***

## **Minimum Age Convention, 1973 (No. 138) (ratification: 2002)**

*Article 2(1) of the Convention. Scope of application.* 1. *Self-employed children.* The Committee had previously noted that by virtue of section 91 of the Labour Act, a worker is a person who has entered into an oral or written contract with an employer. The term “worker” does not include the following persons: (i) persons who are not employed for the purposes of the employer’s business; (ii) members of the employer’s family; (iii) sales representatives in so far as their work is performed outside the permanent workplace of the employer’s business; and (iv) persons to whom materials or articles are given to be cleaned, ornamented, repaired or adapted in order to be sold outside of their premises. The Committee had reminded the Government that the Convention applies not only to work performed under an employment contract but to all types of work or employment regardless of the existence of a contractual relationship, such as self-employment. ***Noting the absence of information in the Government’s report, the Committee once again requests the Government to provide information on the measures taken or envisaged to ensure that all children, including self-employed children, benefit from the protection laid down in the Labour Act. In this respect, it requests the Government to envisage the possibility of amending section 91 of the Labour Act as well as taking measures to adapt and strengthen the labour inspection services with a view to ensuring such protection.***

2. *Minimum age for admission to work.* The Committee had noted that by virtue of section 59(2) of the Labour Act of 1990, a person under 15 years of age shall not be employed or work in industrial undertakings. However, it noted that, according to section 59(1) of the Labour Act, read in conjunction with section 91 of the same Act, “no child under 12 shall be employed or work in any capacity except where he/she is employed by a member of his/her family to perform light work of an agricultural, horticultural or domestic character”. The Committee had also noted that, according to sections 28(1)(b) and 277 of the Child Rights Act of 2003, a child under 18 years shall not be “employed to work in any capacity except where he/she is employed by a member of his/her family to perform light work of an agricultural, horticultural or domestic character”. Moreover, the Committee had observed that section 7(1) of the draft Labour Standards Bill of 2004 follows the same wording as that of section 59(1) of the Labour Act of 1990, in other words, fixing a general minimum age of admission to work or employment of 12 years and did not appear to modify the Labour Act of 1990 in light of the relevant provisions of the Child Rights Act of 2003. In this regard, the Committee had noted with concern that the national legislation provided for a wide variety of minimum ages, and that many of these minimum ages were too low.

The Committee notes the Government’s statement that the Legal Departments of the Federal Ministry of Labour and Productivity and the Federal Ministry of Women’s Affairs and Social Development have been required to provide legal advice on this matter. ***The Committee expresses the firm hope that the Government will take the necessary measures, without delay, to harmonize its legislation and to provide for a general minimum age for admission to employment or work of 15 years. The Committee requests the Government to provide information on any progress made in this regard.***

3. *Children working in agriculture and domestic services.* The Committee notes that the Labour Act permits the employment of children under the age of 12 years in agriculture, horticulture and domestic services. Section 65 of the Labour Act further provides that the Minister may make regulations concerning the employment of women and young persons as domestic servants. The Committee notes that, according to the UNICEF Information Sheet on Child Labour in Nigeria, 2006, an estimated 15 million children under the age of 14 years work in Nigeria, mostly in the semi-formal and informal economy with hundreds of thousands of young domestic workers working for prosperous urban families. It also notes the information from a report available on the website of the United Nations High Commissioner for Refugees (UNHCR) that children in Nigeria are engaged in dangerous activities in agriculture and domestic service. Children engaged in work in cocoa plantations are often exposed to pesticides and chemical fertilizers. The Committee expresses its ***serious concern*** at the situation and number of children below the minimum age who work as domestic workers and in the agricultural sector. ***The Committee requests the Government to provide information on the measures taken or envisaged to ensure that children under 15 years are not admitted to work in agriculture or in domestic work, except for light work as laid down under Article 7(1) of the Convention. It also asks the Government to indicate whether a regulation on domestic service was adopted pursuant to section 65 of the Labour Act.***

*Article 3(2). Determination of hazardous work.* The Committee had previously noted that neither the Labour Act nor the Child Rights Act provide for a comprehensive list of types of hazardous work, especially regarding occupations that are likely to harm the morals of children. It had therefore requested the Government to take the necessary measures to determine in detail the types of work, which, by their nature or the circumstances in which they are carried out, are likely to jeopardize the health, safety or morals of children under 18 years of age.

The Committee notes the Government’s indication that the Occupational Safety and Health Bill, which is currently before the National Assembly for approval, contains the list of types of hazardous work prohibited to young persons under the age of 18 years. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Occupational Safety and Health Bill, which contains a list of types of hazardous work prohibited to young persons under the age of 18 years, will be adopted in the near future. It requests the Government to supply a copy, once it has been adopted.***

*Article 6. Apprenticeship.* The Committee had previously noted that, according to section 49(1) of the Labour Act, a person aged 12–16 years of age may undertake an apprenticeship for a maximum period of five years. Section 52(a)

of the Labour Act states that the Minister may make regulations to determine the terms and conditions upon which the contract of apprenticeship may be lawfully entered into as well as the duties and obligations of the apprentices and their masters. The Minister may also regulate the conditions governing the entry of persons aged 12–16 years into apprenticeship (section 52(e) of the Labour Act). The Committee had also noted that the Committee on the Rights of the Child (CRC) expressed its concern at the exploitation and abuse that commonly take place in apprenticeships (CRC/C/15/Add.257, 28 January 2005, paragraph 73). The Committee had reminded the Government that *Article 6* of the Convention permits work done by persons of at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers, and is an integral part of: (a) a course of education or training for which a school or training institution is primarily responsible; (b) a programme of training mainly or entirely in an undertaking; or (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training. ***Noting that the Government's report does not contain a reply to its previous comment, the Committee once again requests the Government to take the necessary measures to ensure that children under 14 years of age do not undertake apprenticeships. It also asks the Government to indicate whether regulations were adopted, pursuant to section 52(a) and (e) of the Labour Act, to regulate apprenticeships.***

*Article 7(1). Minimum age for admission to light work.* The Committee had previously observed that neither the provisions under section 59(1) of the Labour Act, nor section 28(1)(b) of the Child Rights Act provide for a minimum age for admission to light work.

The Committee notes the Government's information that in practice children under 12 years of age do not perform light work. The Committee notes, however, that according to the Multiple Indicator Cluster Survey Report of 2007 (UNICEF/National Bureau of Statistics, Nigeria), 29 per cent of children aged between 5 and 14 years are engaged in child labour. The Committee once again reminds the Government that, according to *Article 7(1)* of the Convention, national laws or regulations may permit the employment or work of children aged 13–15 years 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 at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received. In this regard, the Committee draws the Government's attention to paragraph 393 of the General Survey of 2012 on the fundamental Conventions concerning rights at work, on the requirement to establish a minimum age for admission to light work, in conformity with the Convention. ***The Committee accordingly requests the Government to take the necessary measures to ensure that only children aged 13–15 years may perform light work.***

*Article 7(3). Determination of light work.* In its previous comments, the Committee observed that the conditions in which light work activities may be undertaken were not clearly defined in the Labour Act or in the Child Rights Act.

The Committee notes the Government's reference to section 59(3) and (8) of the Labour Act. According to section 59(3), young persons under the age of 14 years may be employed only on a daily wage, on a day-to-day basis and as long as they return to their place of residence each night. Section 59(8) further states that no young persons under the age of 16 years shall be required to work for a longer period than four consecutive hours or permitted to work for more than eight working hours in any day. The Committee observes that section 59(3) does not prescribe the number of hours during which light work may be permitted to young persons under the age of 14 years. It further observes that the maximum working hours of eight hours a day prescribed under section 59(8) may prejudice the attendance of young persons below the age of 15 years at school or vocational orientation or training programmes as laid down under *Article 7(1)(b)* of the Convention. The Committee therefore once again draws the Government's attention to Paragraph 13(b) of the Minimum Age Recommendation, 1973 (No. 146), which states 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, for rest during the day and for leisure activities. ***The Committee accordingly requests the Government to take the necessary measures to regulate the employment of persons between 13 and 15 years of age in light work, by determining the number of hours during which, and the conditions in which, light work in the agricultural, horticultural and domestic sectors may be undertaken as well as the types of activities that constitute light work. It requests the Government to provide information on the measures taken in this regard.***

*Part III of the report form. Labour inspectorate.* The Committee notes from the Government's report of 2009 under the Labour Inspection Convention, 1947 (No. 81), that the labour inspectorate has not been very effective for the following reasons: (i) inadequate manpower and working materials; (ii) inadequate funding and capacity building; and (iii) obsolete laws (to the extent that the labour laws are reviewed but are pending at the National Assembly for approval). The Government's report under Convention No. 81 further indicated that the Government has established child labour units in all the 36 states and the Federal Capital Territory with the responsibility of coordinating child labour inspection. ***The Committee requests the Government to provide information on the functioning of the child labour units with regard to the child labour inspections carried out and on the number and nature of violations detected. It also requests the Government to take the necessary measures to strengthen the functioning of the labour inspectorate, by increasing the number of labour inspectors as well as by providing them with additional means and resources, in order to ensure the effective supervision of the provisions giving effect to the Convention. It requests the Government to provide***

*information on measures taken in this regard and on the results achieved, including on the number of inspections carried out and violations detected with regard to children.*

*Part V of the report form. Application of the Convention in practice.* The Committee notes from the concluding observations of the CRC of June 2010 that, in Nigeria, public awareness campaigns to combat the economic exploitation of children were carried out, child labour units were established in all states and a survey was conducted in 2008 to identify the prevalence and nature of child labour. The CRC, however, remained seriously concerned at the very high number of children engaged in child labour, in particular in its worst forms (CRC/C/NGA/CO/3-4, paragraph 82). The Committee further notes the information from a report available on the website of the UNHCR that in May 2011 the Ministry of Labour and Productivity (MOLP) reportedly collected data from state governments on the prevalence of child labour. *The Committee requests the Government to provide information on the data collected on the situation of working children in Nigeria during the 2008 survey and by the MOLP in 2011. The Committee also requests the Government to provide information on the manner in which the Convention is applied in practice, including, for example, statistical data on the employment of children under 15 years, extracts from the reports of inspection services, and information on the number and nature of contraventions reported.*

*The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. In this regard, the Committee reminds the Government that it may avail itself of ILO technical assistance to bring its legislation into conformity with the Convention.*

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

## Paraguay

### **Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1966)**

*Article 4(1) and (2) of the Convention. Medical re-examination of fitness for employment until the age of 21 years.* In its previous comments, the Committee requested the Government to take the necessary measures to bring the legislation into conformity with *Article 4* of the Convention, under which provision has to be made for a medical examination of fitness for employment and for periodical re-examination until at least the age of 21 years, in the case of occupations involving high health risks. It also stressed the need to define the occupations or categories of occupations for which such an examination is required.

In its report, the Government provides a considerable amount of information on the measures taken to strengthen the protection of children who work, especially by adopting the National Strategy for the Prevention and Elimination of Child Labour and Protection of the Work of Young People (2010–15) and by consolidating institutional coordination for handling complaints and recording abuse with respect to work carried out by children under 18 years of age. While noting this information, the Committee observes that the Government does not provide information on any measures it might have taken to bring the legislation in conformity with the Convention. It recalls that section 121(b) of the Labour Code subjects the employment of minors under 18 years to a number of conditions, including the obligation to present a yearly physical and mental fitness certificate established by the competent authority. *The Committee therefore requests the Government once again to take the necessary measures to supplement its legislation to ensure, in respect of occupations involving high health risks, the compulsory nature of the examination for fitness for employment and for re-examination until at least the age of 21 years. It also requests the Government to define the occupations or categories of occupations for which such an examination is required.*

*Article 6(1). Measures for vocational guidance and physical and vocational rehabilitation of children and young persons declared unable to work. Noting the absence of information in the Government's report, the Committee again requests it to take the necessary measures to provide for the physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations, and to supply information in this respect.*

*Part V of the report form. Application of the Convention in practice. Given that under section 55 of the Children's and Young Persons' Code, the Municipal Council for the Rights of Children and Young Persons (CODENI) is bound to establish a specific register of young workers, the Committee hopes that the Government will be in a position to supply, in its next report, statistical data on the number of children and young persons working in the industrial sector, the number of those who have undergone the medical examinations provided for under the Convention, information on the infringements reported by the Labour Inspectorate in this area and the penalties imposed, as well as any other information concerning the application of the Convention in practice.*

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1966)**

*The Committee requests the Government to refer to its comments on the application of the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77).*

### **Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) (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:

*Article 3 of the Convention. Period during which it is forbidden to work at night.* In its previous comments, the Committee noted with satisfaction that under section 2 of Decree No. 4951 of 22 March 2005, night work between 7 p.m. and 7 a.m., i.e. a period of 12 hours, is classified as dangerous and that, pursuant to section 3 of the Decree, it is prohibited for children under 18 years of age. It nonetheless noted that section 58 of the Children's and Young Persons' Code prohibits night work for children aged 14 to 18 years for a period of ten hours including the interval between 8 p.m. and 6 a.m. In order to avoid any ambiguity in the law, the Committee deemed it advisable to align section 58 with the Children's and Young Persons' Code with Decree No. 4951 of 22 March 2005 and the Convention, by introducing an amendment to increase to 12 hours the period during which young persons must not work at night.

While noting the information from the Government that the exceptions allowed by this provision of the Convention have not been used, the Committee again expresses the view that it would be advisable to align section 58 of the Children's and Young Persons' Code with Decree No. 4951 of 22 March 2005, the Convention and practice. **It requests the Government to take the necessary steps to amend section 58 of the Children's and Young Persons Code and to establish that the period during which children may not work at night must be 12 hours.**

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

## **Philippines**

### **Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1953)**

*Article 2 of the Convention. Period during which night work is prohibited.* In its previous comments, the Committee had noted that the regulation issued by Directive No. 23 of 30 May 1977, which prohibited night work for young persons under 16 years between 10 p.m. and 6 a.m. was not in conformity with the provisions of the Convention, under the terms of which the prohibition should cover a period of at least 12 consecutive hours, including the interval between 10 p.m. and 6 a.m. Recalling that according to *Article 2* of the Convention, the term *night* signifies a period of 12 consecutive hours (*paragraph 1*), which for young persons under 16 years of age, this period shall include the interval between 10 p.m. and 6 a.m. of the following day (*paragraph 2*), and for young persons between the ages of 16 and 18 years, the interval of at least seven consecutive hours falling between 10 p.m. and 7 a.m. (*paragraph 3*), the Committee had requested the Government to take the necessary measures in order to bring the national legislation into conformity with *Article 2* of the Convention.

The Committee notes that according to subsections (1) and (2) of section 12-A of the Republic Act No. 9231 of 2003, a child below 15 years shall not be allowed to work for more than four hours a day and a child between 15 and 18 years of age shall not be allowed to work for more than eight hours a day. It also notes that subsection (3) of section 12A of Act No. 9231 further prescribes that no child under 15 years of age shall be allowed to work between 8 p.m. and 6 a.m. of the following day and no child between 15 and 18 years shall be allowed to work between 10 p.m. and 6 a.m. of the following day. The Committee, therefore, observes with **satisfaction** that subsections (1), (2) and (3) of section 12-A when read together, lead to a prohibition to work during the night as required by *Article 2* of the Convention. The Committee further notes that section 5(a) and (b) of Republic Act No. 679 of 1952, which prohibits night work by children under 18 years of age also states that children employed at night shall be granted a rest period of at least 13 consecutive hours between two working periods.

## **Portugal**

### **Night Work of Young Persons (Industry) Convention, 1919 (No. 6) (ratification: 1932)**

The Committee notes the Government's report. It also takes note of the observations sent by the General Workers' Union (UGT) and the General Confederation of Portuguese Workers (CGTP).

*Article 2(2) of the Convention. Exceptions to the prohibition of night work by young persons.* In its previous comments, the Committee had noted section 65 of Act No. 99/2003 approving the Labour Code (Labour Code of 2003) which regulates the night work of young persons. It had noted that according to section 65(3) of the Labour Code of 2003, a collective agreement may provide that a young person aged 16 or over may work at night in specific sectors of activity, except during the period between midnight and 5 a.m. Moreover, it had noted section 65(4) of the Labour Code of 2003 which stated that a young person aged 16 or over may work at night, in cultural, artistic, sporting or advertising activities, where there are objective grounds for doing so and on condition that he/she is granted a compensatory period of rest equal to the number of hours worked.

The Committee had noted the observations made by the CGTP that the national legislation authorizes the night work of young persons aged 16 and over in particular sectors of activity without specifying the sectors themselves.

The Committee once again notes the allegations made by the CGTP reiterating its previous comments that the national legislation does not expressly state the sectors of activity in which night work is authorized for young persons over 16 years of age. The CGTP further alleges that this task is being left to collective bargaining which would lead to a generalization or widespread habit in practice not permitted by the Convention. The Committee also notes the UGT's statement that since this Convention dates from 1919 and was ratified by Portugal in 1932, it is natural that some of its provisions may have become obsolete.

The Committee notes the Government's indication that the Labour Code of 2003 has been revised and the night work of young persons under 18 years of age is now covered by section 76 of the Legislative Decree No. 7/2009 (Labour Code of 2009) which retains the provisions previously contained in section 65 of the Labour Code of 2003. In this regard, the Committee notes that the Government continues to consider that some provisions of the Convention which might have been justified at the time of its adoption in 1919, have lost any relevance with the passage of 93 years, and does not reflect the world of work today. The Government, once again recalling the decision taken by the Governing Body, considers that the Convention should be revised as soon as possible, and that it is looking forward for that.

The Committee reminds the Government that as long as the Convention has not been revised and has not been denounced by a ratifying country as per *Article 13* of the Convention, it remains in force and is binding upon those countries that have ratified the Convention. Such a country is under an obligation to comply with the provisions of the Convention. The Committee once again recalls that according to *Article 2(1)* of the Convention, young persons under 18 years of age shall not be employed during the night in any industrial undertaking, other than an undertaking in which only members of the same family are employed and in the cases listed in *Article 2(2)* of the Convention. **The Committee therefore requests the Government to take the necessary measures to specify the activities in which night work may be authorized for children over 16 years of age as per section 76(3)(a) of the Labour Code of 2009, so as to be in conformity with Article 2(1) and (2) of the Convention.**

*Article 3(1). Employment of children in industrial undertakings.* Noting that the provisions laid down under section 65 of the Labour Code of 2003 did not completely comply with the provisions of the Convention, the Committee had reminded the Government that according to *Article 3(1)* of the Convention, the term "night" signifies a period of at least 11 consecutive hours, including the interval between 10 p.m. and 5 a.m. It had therefore requested the Government to take the necessary measures to bring the national legislation into conformity with the Convention on this point.

The Committee notes the allegations made by the CGTP that national legislation fails to conform to *Article 3(1)* of the Convention in terms of the definition of "night work".

The Committee notes that according to section 76(1) of the Labour Code of 2009, it is prohibited to employ a young person under 16 years of age between 8 p.m. and 7 a.m. It also notes section 76(2) of the Labour Code of 2009 which states that a young person aged 16 and over cannot work between 10 p.m. and 7 a.m. In this regard, the Committee notes that according to section 73(1) of the Labour Code of 2009, the working hours of a young person (between the ages of 16 and of 18 years) shall not exceed eight hours a day or 40 hours per week. The Committee, therefore, observes with **satisfaction** that sections 73(1) and 76(2) of the Labour Code of 2009, when read together, lead to a prohibition to work during the night as required by *Article 3(1)* of the Convention. The Committee further notes that by virtue of section 73(2) of the Labour Code of 2009 a collective agreement on employment may further reduce or limit the maximum working hours of young persons.

*Part V of the report form. Application of the Convention in practice.* The Committee notes the Government's information that in the course of the inspections carried out by the Working Conditions Authority during the period from June 2008 to May 2012, four infringements of the provisions governing the prohibition of night work by minors were detected and were the subject of prosecutions.

### **Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1983)**

The Committee notes the Government's report. It takes note of the observations sent by the General Workers' Union (UGT) and the General Confederation of Portuguese Workers (CGTP).

The Committee notes the allegations made by the CGTP referring to the lack of provisions in the national legislation to give effect to the Convention. The Committee notes the Government's reference to the newly adopted Act No. 102/2009 of 10 September approving the legal framework for the promotion of safety and health at work (which incorporates most of the provisions of Act No. 34/2004) and Act No. 98/2009 of 4 September regulating the system of compensation for accidents at work and occupational diseases, including rehabilitation and reintegration. Accordingly, the Committee notes with **interest** that the above Acts guarantee compliance with the following provisions of the Convention.

*Article 4 of the Convention. Medical examination until the age of 21 years for occupations involving high health risks.* In its previous comments, the Committee had noted that neither the Labour Code nor Act No. 35/2004 contained provisions requiring a medical examination for fitness for employment and periodical re-examinations for persons until the age of 21 years for occupations which involve high health risks. It had therefore requested the Government to provide information on the measures taken or envisaged to this end.

The Committee notes with *satisfaction* that according to section 108(3)(a) of Act No. 102/2009, all workers working in occupations involving high health risks are required to undergo a medical examination prior to their employment. Moreover, while minors (under the age of 18 years) and employees above 50 years are required to undergo a periodic medical examination every year, all other workers (including workers between the age group of 18 and 21 years) are required to undergo a periodic medical examination once in two years (section 108(3)8B). Section 108(4) of the Act further states that based on the worker's state of health and the results of the occupational risk assessment in the workplace, the medical officer, may increase the intervals between the medical examinations of the worker.

*Article 5. Medical examination to be free of charge.* The Committee had previously requested the Government to indicate whether the medical examinations prescribed by the legislation are free of charge. The Committee notes with *interest* that according to section 15(12) of Act No. 102/2009, the employer bears the expense of medical examinations, evaluation of cases of exposure, medical tests or any other activities related to occupational risks and health monitoring, without imposing any financial charges on the workers.

*Article 6(2). Physical and vocational rehabilitation of children and young persons found to be unsuited or to have physical handicaps or limitations.* The Committee had previously reminded the Government that as per *Article 6(2)* of the Convention the nature and extent of the measures taken for vocational guidance and physical and vocational rehabilitation of workers found unsuited for work, shall be determined by the competent authority, and for this purpose cooperation shall be established between the labour, health, educational and social services concerned, and effective liaison shall be maintained between these services in order to carry out such measures. It had requested the measures taken in this regard.

The Committee notes section 110(2) of Act No. 102/2009 which provides that where the medical examination indicates a worker's unsuitability for certain types of work, the workplace medical officer shall indicate in such cases, other types of work suitable for such worker. Moreover, according to section 155(1) and (2) of Act No. 98/2009, workers who have been the victims of an accident or contracted an occupational disease resulting in temporary, partial or permanent incapacity are assured vocational training, adaptation of the workplace or part-time work by the employer. The Committee further notes with *satisfaction* that, according to section 155(3) of Act No. 98/2009, the Government must create vocational rehabilitation, reintegration and placement services in coordination with the existing services. The Committee also notes that in connection with worker's rehabilitation and reintegration, sections 162–166 of Act No. 98/2009 envisages the possibility of collaboration between public services responsible for employment and vocational training, as well as services responsible for protection against occupational risks and other services.

*Part V of the report form. Application of the Convention in practice.* The Committee notes the observations made by the CGTP that in addition to the lack of legislative provisions, the enforcement of legal obligations relating to monitoring the health of minors is inadequate which is aggravated by the shortcomings of the actions of the Working Conditions Authority (ACT).

The Committee notes the information provided by the Government regarding the violations detected relating to medical examinations of minors during the inspection activities carried out by the ACT. Accordingly, nine violations each were detected in 2007–08; four violations were detected in 2009; six violations were detected in 2010; and two violations were detected in 2011.

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1983)**

The Committee notes the Government's report. It also takes note of the observations sent by the General Workers' Union (UGT) and the General Confederation of Portuguese Workers (CGTP).

*With regard to Articles 4, 5 and 6(2) of the Convention, the Committee requests the Government to refer to its comments under the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77).*

*Article 7(2)(a) of the Convention. Supervision for the enforcement of the system of medical examination for fitness for employment of children engaged either on their own account or on account of their parents.* The Committee had previously noted the comments made by the UGT and the CGTP that undue use of child labour still persisted in rural areas. The CGTP further stated that the labour inspection services did not yet react to this state of affairs. The Committee had reminded the Government to adopt measures of identification for ensuring the application of the system of medical examination for fitness for employment to children and young persons engaged, either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets, or in places to which the public have access (for example, a requirement for the child or young person to be in possession of a document attesting to a medical examination for fitness).

The Committee notes the Government's information that children and young persons engaged, either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets, or in places to which the public have access are covered by Act No. 102/2009 on the system of protection of safety and health at work which is applicable to all sectors of activity including self-employed workers. It notes that according to section 108(3) of Act No. 102/2009, all workers, including minors, are required to undergo a medical examination prior to their employment and to further undergo periodic annual examination. The Committee notes with *satisfaction* that as per



section 3 of Act No. 102/2009, the provisions of this Act apply to family undertakings, domestic work, agricultural and fishing sector as well as self-employment. The Committee further notes the Government's information that according to the provisions of Law Decree No. 399/91 which adapted the regulations on street vending, under Law Decree No. 122/79, children under the age of 18 years are required to undergo a free medical examination which certifies their physical fitness to perform the occupation, before they are issued a permit to work as an itinerant trader.

*Part V of the report form. Application of the Convention in practice.* Concerning the observations made by the UGT and the CGTP on the inadequate enforcement of the legal provisions on medical examination, the Committee notes the Government's statement that children under 16 years of age are entitled to perform light work according to section 68(4) of the Labour Code. In Portugal, children work in farms and small-scale family businesses which are widely scattered in the country and where it is difficult to distinguish an employment relationship in the true sense. The Committee notes the Government's information that the Working Conditions Authority (ACT) has given priority to the eradication of the illegal employment of children and inspection action plans had always focused on conditions of employment of children. It further notes from the Government's report that with regard to inspection activities, 202 inspections were carried out in 2010 to monitor the employment and working conditions of minors during which 20 violations were detected and penalties ranging between €33,150 and €73,713 were imposed. Most of the violations detected were with regard to the failure to provide medical examinations, violation of the minimum requirements for admission of minors to employment (without compulsory schooling or vocational qualification) and failure to inform the ACT about the employment of minors. In this regard, the Committee also notes the Government's indication in its report of 2011 under the Minimum Age Convention, 1973 (No. 138), that the labour inspectors have not detected any cases of illegal work in the domestic sector, though six cases of illegal work by minors in other sectors were detected in 2009 and 2010.

## Russian Federation

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1979)**

*Article 2(1) of the Convention. Scope of application. Children working in the informal economy.* The Committee previously noted that section 63(1) of the Labour Code prohibited children under 16 years of age from signing an employment contract. The Committee also noted the Government's statement that the illegal employment of minors and the violation of their labour rights are frequent occurrences in the informal economy. This involves minors who wash cars, engage in trading and perform auxiliary work. The Committee subsequently noted the Government's information regarding measures taken to prevent children from signing employment contracts in breach of the national labour legislation, but observed an absence of information regarding any measures taken to ensure that children who work without an employment contract enjoyed the protection afforded by the Convention.

The Committee once again notes an absence of information in the Government's report regarding measures taken to address children working outside the scope of an employment contract or in the informal economy. However, the Committee notes the Government's statement, in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that one of the most common violations detected by the state labour inspectorate involving persons under the age of 18 was the failure to conclude employment contracts in written form. The Committee also notes that the Committee on Economic, Social and Cultural Rights, in its concluding observations of 1 June 2011, expressed concern regarding the large number of children who live and work on the streets, in particular in the informal sector where they are vulnerable to abuse to such an extent that regular school attendance is severely restricted (E/C.12/RUS/CO/5, paragraph 24). **Recalling that the Convention applies to all branches of economic activity and covers all types of employment or work, the Committee urges the Government to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children working in the informal economy. The Committee requests the Government to supply information on the specific measures taken in this respect in its next report.**

*Parts IV and V of the report form. Labour inspectorate and the application of the Convention in practice.* The Committee previously noted the information from a 2009 study carried out by the ILO-IPEC, within the framework of a project on street children in the region of St. Petersburg, that children, some as young as 8 and 9 years old, were engaged in economic activities such as collecting empty bottles and recycling paper, transporting goods, cleaning workplaces, looking after property, street trading and cleaning cars.

The Committee notes the statement in the Government's report that the Federal Labour and Employment Service (Rostrud) and its local departments (the state labour inspectorates) ensure the protection of the labour rights of minors in employment through their inspection activities. In this regard, the Committee notes the information in the Government's report submitted under Convention No. 182 that 1,267 inspections were carried out in the first six months of 2010 to verify compliance with legislation relating to children under 18 and 564 such inspections were carried out in the first six months of 2011. The Government also indicates that in the first six months of 2010, 1,865 violations were detected relating to persons under 18, and 1,461 such violations were detected over the same period in 2011. Consequently, labour inspectors imposed fines amounting to 1,200,000 Russian roubles (RUB) in the first six months of 2010, and fines of RUB756,000 over the same period in 2011. The Committee therefore observes that significantly fewer inspections were

carried out to verify compliance with legislation relating to children under 18 in the first six months of 2011 (564 such inspections detecting 1,461 violations) compared to the first six months of 2010 (1,267 inspections detecting 1,865 violations). ***The Committee accordingly urges the Government to strengthen its efforts to effectively address and eliminate child labour, including in the informal economy. Moreover, the Committee requests the Government to take the necessary measures to ensure that sufficient data on the situation of working children in the Russian Federation is made available, including information on the number of children below the minimum age engaged in economic activity, and the nature, scope and trends of their work. To the extent possible, all information provided should be disaggregated by sex and by age.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted that while child trafficking is prohibited in law (pursuant to section 127.1 of the Criminal Code), it remains a source of serious concern in practice. In this regard, the Committee noted that, according to the International Trade Union Confederation, thousands of persons are 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 is also reportedly taking place and cases have been confirmed of children being trafficked for sexual exploitation. The Committee also noted that, according to the report of 24 January 2007 of the UN Special Rapporteur on the sale of children, child prostitution and child pornography in Ukraine (A/HRC/4/31/Add.2, paragraphs 48–49), the Russian Federation is also a destination country for boys and girls between 13 and 18 years of age trafficked from Ukraine, for exploitation in street vending, domestic labour, agriculture, dancing, employment as waiters/waitresses or for the provision of sexual services. The Committee further noted the Government's indication that in 2008 the courts examined the cases of five persons involved in three instances of the trafficking of minors. In this respect, the Committee observed that the number of cases involving the trafficking of children reported by the authorities remained low.

The Committee notes the information in the Government's report submitted under the Forced Labour Convention, 1930 (No. 29) that, in 2009, 66 offences were recorded of the trafficking of minors (section 127.1(2)(b) of the Criminal Code), and 67 persons were found to have committed these offences. It also notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 10 August 2010, expressed concern at the high prevalence of trafficking in the country, which had increased more than sixfold during the reporting period. The CEDAW also noted with concern that the Russian Federation is a source, transit and destination country for trafficking and expressed regret regarding the lack of disaggregated data on the number of victims of trafficking, including minors (CEDAW/C/USR/CO/7, paragraph 26). Moreover, the Committee notes that the Committee on Economic, Social and Cultural Rights, in its concluding observations of 1 June 2011, expressed concern about continued reports of trafficking in women and children for sexual exploitation and abuse (E/C.12/RUS/CO/5, paragraph 23). The Committee expresses its ***deep concern*** that the trafficking of children for economic or sexual exploitation remains a serious problem in practice. ***It therefore urges the Government to take immediate and effective measures to combat and eliminate the trafficking of children under 18 years of age, without delay. In this respect, the Committee requests the Government to take the necessary measures to ensure that perpetrators of child trafficking are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. It also requests the Government to provide information on the number of reported violations, investigations, prosecutions, convictions and penalties imposed related to the sale and trafficking of children. To the extent possible, all information provided should be disaggregated by sex and by age.***

*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.* The Committee previously noted that a draft Law on combating human trafficking, which aimed to establish appropriate measures to ensure the legal protection and social rehabilitation for victims, was under discussion in the Duma Commission on Family Issues for Women and Children. However, the Committee also noted the indication by the Worker members of the Conference Committee on the Application of Standards at the 98th Session (June 2009) of the International Labour Conference that the draft Law on combating human trafficking appears to be suspended since 2006. The Committee further noted that the Conference Committee on the Application of Standards called on the Government to take the necessary measures to ensure the adoption of the draft Law on combating human trafficking. The Committee requested information on the number of child victims of trafficking who had benefited from appropriate services for their rehabilitation.

The Committee notes an absence of information on this point in the Government's report. However, the Committee notes that the Human Rights Committee, in its concluding observations of 24 November 2009, expressed concern about the notable lack of recognition of the rights and interests of trafficking victims in the counter-trafficking efforts of the Government (CCPR/C/RUS/CO/6, paragraph 18). ***Therefore, the Committee requests the Government to strengthen its efforts to provide for the removal, rehabilitation and social reintegration of child victims of trafficking. It requests the Government to provide information on the effective and time-bound measures taken in this regard in its next report, and on the number of children who have benefited from the appropriate services provided. Lastly, the Committee requests the Government to take immediate steps to ensure that the draft Law on combating human trafficking is adopted in the very near future to ensure the provision of rehabilitation and social integration services to child victims of trafficking.***

*Article 8. International cooperation and assistance.* The Committee previously noted that the Ministry of the Interior had drafted a cooperation agreement between the Ministries of the Interior (police) of the member countries of the Commonwealth of Independent States (CIS) to combat the trafficking of persons. It requested information on the international cooperation measures taken to eliminate the cross-border trafficking of children.

While noting the absence of information from the Government on this point, the Committee notes that the Human Rights Committee, in its concluding observations of 24 February 2009, welcomed the international cooperation measures undertaken by the Government to combat trafficking (CCPR/C/RUS/CO/6, paragraph 18). In this regard, the Committee notes the information from the International Organization on Migration that it is carrying out several projects in the country, including one entitled “Preventing and counteracting trafficking in human beings in the Russian Federation”. The Committee also notes that in December 2010, the President signed the CIS Programme to Combat Human Trafficking for 2011–13, which outlines commitments to form a national anti-trafficking structure and fund NGOs to provide victim protection. **Considering that the sale and trafficking of children continues to be a matter of serious concern in the country, the Committee urges the Government to pursue its international cooperation efforts to combat and eliminate the trafficking of children. It requests the Government to provide information on specific measures taken in this regard, and on the results achieved.**

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

## Rwanda

### Minimum Age Convention, 1973 (No. 138) (ratification: 1981)

*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 a draft National Five-Year Action Plan for the Elimination of Child Labour (NAP) was first developed in 2007, but had not been adopted. It also noted that, according to the National Child Labour Survey (NCLS) of 2008, approximately 6.1 per cent of children between the ages of 5 and 14 in the country (approximately 142,570 children) were involved in economic activity. The NCLS also indicated that the majority of these working children (4.9 per cent of children in the age group) combined both school and economic activity. The NCLS further indicated that the overwhelming majority of working children (85 per cent) were in the agricultural sector.

The Committee notes the Government’s statement that the revision of the NAP is in the final process of consultation. The Committee also notes the information from ILO–IPEC of April 2012 that the revised NAP should include recent data on child labour and, in this regard, an ILO technical team travelled to Kigali in the spring of 2012. The Committee further notes that Rwanda is one of several countries participating in the ILO–IPEC project entitled “Project Development, Awareness Raising and Support for the Implementation of the Global Action Plan on the Elimination of the Worst Forms of Child Labour by 2016”. Information from ILO–IPEC indicates that implementation of the Project in Rwanda was extended until June 2013. **Noting that the NAP was first developed in 2007, the Committee urges the Government to ensure the elaboration, adoption and implementation of the NAP in the near future. The Committee requests the Government to provide information on progress made in this regard, and on the results achieved.**

*Article 2(2). Raising the initially specified minimum age for admission to work.* The Committee previously noted the adoption of the Law Regulating Labour (2009), which prohibits employing a child even as apprentice, before the age of 16. **Observing that, upon ratification the Government specified the minimum age of 14 years, the Committee draws the Government’s attention to the fact that Article 2(2) of the Convention provides that any Member having ratified the Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age from that which it had initially specified. To allow the age fixed by national legislation (of 16 years) to be harmonized with that provided for at the international level, the Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office.**

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted the Government’s indication that it intended to progressively increase the number of years of compulsory schooling from six to nine years, thereby raising the age of completion of compulsory schooling to 16 years of age. The Committee requested the Government to provide information on whether the extension of the duration of compulsory education from six to nine years was contained in national legislation.

The Committee notes the Government’s statement that the progressive extension of compulsory education from six to nine years is contained in the Education Sector Policy of July 2003. Moreover, the Committee notes the Government’s statement in its report to the Committee on the Rights of the Child of 1 March 2012 that, since the 2009 school year, Rwanda has introduced a cycle of nine years so that children normally complete school at 16 years (CRC/C/RWA/3-4, paragraph 95). The Committee notes with *interest* that this age of completion of schooling of 16 years is in line with the new minimum age for admission to work specified in the Law Regulating Labour (2009).

*Article 3(2). Determination of hazardous work.* The Committee previously noted that a draft ministerial order on the worst forms of child labour had been developed. It requested the Government to provide a copy of the order, once adopted.

The Committee notes with *satisfaction* the adoption of Ministerial Order No. 06 of 13 July 2010 determining the list of the worst forms of child labour, their nature and categories of institutions that may not employ children. This Order contains an extensive list of hazardous types of work, including: underground work; work in mining; work at high heights; work in the drainage of marshlands; work in unhygienic places; work with high temperatures, noises and vibrations; work related to demolition; work carried out using machines or other dangerous materials; work involving the lifting of heavy loads; fishing on boats; domestic work outside of the family; construction work; and the driving of heavy machines. The Ministerial Order also contains a list of categories of institutions that are not permitted to employ children, such as enterprises that carry out the slaughtering of animals, mining and quarry enterprises, enterprises that manufacture toxic gases, construction enterprises, enterprises that produce and sell alcoholic beverages, and enterprises that manufacture bricks and tiles.

*Article 9(3). Registers of employment.* In its previous comments, the Committee noted that section 165 of the Law Regulating Labour (2009) states that employers must keep a register of workers, and that section 166 states that the Minister shall determine the nature of this register. The Committee noted that a draft ministerial order had been developed in this regard.

The Committee notes the adoption of Ministerial Order No. 10 of 28 July 2010 regarding the declaration of an enterprise and the nature of employer's registers. The Committee notes with *interest* that section 6 of this Ministerial Order states that every employer shall have a register of employment, and that this register shall be kept at the place of work. Annex II of the Ministerial Order contains a model for the employer's register, which includes the employee's name, date of birth and the date of their work contract. The Committee further notes that section 7 of the Ministerial Order provides that the employer's register shall be available to labour inspectors when requested.

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

## Senegal

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the Government's report and the communication from the International Trade Union Confederation (ITUC) of 31 August 2012.

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children for economic exploitation; forced labour and penalties. Begging.* In its previous comments, the Committee noted that the Committee on the Rights of the Child, in its concluding observations in October 2006 (CRC/C/SEN/CO/2, paragraphs 60 and 61), expressed concern at the practices in 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, thereby preventing them from having access to health, education and good living conditions.

The Committee previously noted with concern that, although section 3 of Act No. 2005–06 prohibits the organization, for economic gain, of begging by others or the employment, procuring or deceiving of anyone with a view to causing that person to beg, or the exertion of pressure on a person to beg or to continue begging, section 245 of the Penal Code provides that "the act of seeking alms on days, in places and under conditions established by religious traditions does not constitute the act of begging". It accordingly observed that, from a joint reading of these two provisions, it would appear that the act of organizing begging by *talibé* children cannot be criminalized as it does not constitute an act of begging under section 245 of the Penal Code. The Committee further noted that the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, in her report of 28 December 2010 submitted to the Human Rights Council following her mission to Senegal (A/HRC/16/57/Add.3), noted the inconsistency between section 3 of Act No. 2005–06 and section 245 of the Penal Code (paragraph 31). The Committee also noted that the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, in its concluding observations of 3 December 2010 (CMW/C/SEN/CO/1, paragraph 26), noted with concern that more than half of the children who are forced to beg in the Dakar region come from neighbouring countries and that the Government of Senegal has not taken any practical steps to end regional trafficking in children for the purpose of begging.

The Committee further noted the comments of the ITUC indicating that the number of *talibé* children compelled to beg, consisting mainly of boys between the ages of 4 and 12 years, was estimated at 50,000 in 2010. The ITUC observed that most of these children live in isolated rural areas of Senegal or are victims of trafficking from neighbouring countries, including Mali and Guinea-Bissau. It emphasized that these children in practice receive very little education and are extremely vulnerable, because they depend totally on their Koranic teacher or *marabout*. They live in unhealthy conditions and in poverty, and are the victims of physical and psychological abuse if they do not succeed in earning their financial quota through begging. With regard to the causes of the phenomenon, the ITUC explains that poverty alone cannot explain this form of exploitation, as the evidence tends to show that certain *marabouts* earn more through children begging than the income necessary to maintain their *daaras* (Koranic schools). The ITUC added that there are no records of arrests, prosecutions or convictions of *marabouts* for compelling *talibés* to beg up to August 2010, when the Prime Minister announced the adoption of a Decree prohibiting begging in public places. Following this measure, seven Koranic teachers were arrested and convicted to prison sentences under Act No. 2005–06 of 29 April 2005 to combat the trafficking of persons and similar practices and to protect victims. However, these sentences were never imposed. Indeed,

the ITUC indicated that branch associations of Koranic teachers were reported to have condemned the application of Act No. 2005-06 and threatened to withdraw their support from the President in the elections in February 2012. In October 2010, the President, therefore, reversed the Government's decision.

The Committee notes the fresh allegations made by the ITUC that Senegal has been very lax in terms of the enforcement of the law and repression of the exploitation of *talibés* and the ill-treatment inflicted on these children. The ITUC reports that, since the conviction and release of the *marabouts* arrested in 2010, no *marabout* has been prosecuted or, in particular, convicted. Furthermore, the ITUC indicates that it would be useful to amend the Penal Code so as to remove any doubt as to whether compelling a child to beg is prohibited in all places and under all circumstances, including in *daaras*, so as to bring the legislation into full conformity with the commitments made by Senegal in relation to the Convention.

The Committee notes the information provided by the Government in its report concerning begging by children. The Government indicates, in particular, that in its view there is no ambiguity between the provisions of section 245 of the Penal Code and section 3 of Act 2005-06. According to the Government, by specifying that the fact of seeking alms under the conditions established by religious traditions does not constitute begging, section 3 of Act 2005-06 is merely making a distinction between forms of begging that are prohibited and those that are tolerated. The Government adds that continuous begging in the streets of the city is a penal offence under Senegalese law, while asking for alms, for example on Fridays in mosques or on mass days in churches, is tolerated in light of socio-cultural beliefs.

The Committee notes that the Committee on the Elimination of Racial Discrimination, in its examination of the reports submitted by Senegal on 31 August 2012, notes with concern the persistence and extent of the phenomenon of *talibé* children (CERD/C/SEN/CO/16-18, paragraph 14). The Committee on the Elimination of Racial Discrimination also expresses regret that the inconsistency between section 3 of Act No. 2005-06 and section 245 of the Penal Code persists despite the recommendations of the Special Rapporteur on the sale of children, child prostitution and child pornography (paragraph 14). In this respect, although the Committee of Experts notes the Government's indications concerning the prosecutions initiated and the convictions handed down for trafficking between 2008 and 2010, it is bound to note that the Government has not provided any information on the investigation, arrest or conviction of *marabouts* for the exploitation of begging by child *talibés*.

With reference to the General Survey on the fundamental Conventions concerning rights at work of 2012 (paragraph 483), the Committee reminds the Government that, while the issue of seeking alms as an educational tool falls outside the scope of the Committee's mandate, it is clear that the use of children for begging for purely economic ends cannot be accepted under the Convention. This situation constitutes a deviation from the legitimate purposes of this traditional educational system and its methods. Often kept in conditions of servitude, *talibé* children are obliged to work daily, generally in street begging, in order to give the money received to their *marabouts*.

The Committee is, therefore, bound once again to express its **deep concern** at the large number of *talibé* children used for purely economic ends and the failure to give effect to Act No. 2005-06 in respect of Koranic teachers who make use of begging by *talibé* children for exclusively economic purposes. The Committee reminds the Government that, under the terms of *Article 1* of the Convention, immediate and effective measures shall be taken as a matter of urgency to secure the prohibition and elimination of the worst forms of child labour and that, in accordance with *Article 7(1)* of the Convention, all necessary measures shall be taken 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, therefore, once again urges the Government to take immediate and effective measures, in law and practice, to ensure that persons engaged in the sale and trafficking of *talibé* children under 18 years of age for the purposes of economic exploitation, or who make use of these children for begging for purely economic purposes, are prosecuted effectively and that sufficiently effective and dissuasive sanctions are applied to them. In this respect, the Committee once again requests the Government to take the necessary measures to harmonize the national legislation so as to guarantee that the use of begging by *talibé* children for economic exploitation can be criminalized under section 245 of the Penal Code and under Act No. 2005-06. It requests the Government to provide information on the measures adopted in this respect and on the number of investigations conducted, prosecutions, convictions and penal sanctions imposed on such persons.**

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Talibé children.* In its previous comments, the Committee noted that a partnership for the removal and reintegration of street children (PARRER) had been 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 Committee noted the ITUC's comments indicating that the Government had adopted measures to promote a programme of modern *daaras* administered or regulated by the State. It noted that the Government established the inspectorate for *daaras* in 2008 to implement the programme for the modernization of *daaras* and the integration of modern *daaras* into the public education system. It further noted that the Ministry of Education signed an agreement with PARRER for the development of a harmonized school programme for Koranic schools, launched in January 2011. In its reply to the ITUC's comments, the Government indicated that it was engaged in improving the management and framework of the system of teaching in *daaras*. A number of actions were also envisaged in its strategy for the prevention of begging by children, such as the implementation of social protection measures in the areas of origin of migrant children, the establishment of programmes

of conditional transfers for vulnerable families, support for the creation of income-generating activities for *marabouts* and the broadening of the teaching curriculum in Koranic schools with a view to facilitating the integration of young *talibés* into active life. The Committee also noted that, according to the information contained in the report of the United Nations Special Rapporteur of 28 December 2010, the Care, Information and Counselling Centre for Children in Difficulties (the GINDDI Centre), under the Ministry of Education, has been responsible since 2003 for taking children off the streets and reintegrating them, and for providing psychological support and social assistance to girl and boy victims of trafficking (paragraph 68).

The Committee notes that, according to the ITUC, the harmonized school programme for Koranic schools of the PARRER is currently being implemented as a pilot measure in 20 *daaras* in four regions of Senegal (Dakar, Thiès, Fatick and Kaolack). The pilot programme is planned for three years (2011–14) and is to be progressively extended throughout the nation as from 2012–13. Children in the *daaras* concerned will not be compelled to engage in begging. The ITUC also reports that, while the former Government failed to enforce the laws in force, the new President elected in April 2012 has affirmed his commitment to modernizing *daaras* and should adopt the programme, making it a priority and accelerating its implementation at the national level, particularly in rural areas, from which most child *talibés* originate.

The Committee notes the Government's indications concerning the measures adopted for the protection or removal of vulnerable children or those who are victims of trafficking and exploitation. The Committee notes that these measures include the "Education and Family Life (EVF)" project in *daaras*, which envisages a number of activities, including training for Koranic masters and *talibé* children on the rights of the child and their protection, and the improvement of the living conditions and education of child *talibés* in *daaras*. The Committee also notes that, with a view to preventing the movement of children in the Kolda region (a border area), thought to be the biggest area of origin of child beggars, a pilot project has been established to provide financial allowances to families.

The Government adds that, in the context of the PARRER, a number of activities have been undertaken, including advocacy visits to major religious leaders and Koranic masters, measures of prevention and to remove children from the streets, and the development of broad awareness-raising campaigns. These various activities have led to a number of results being achieved, including the identification of 1,129 families at risk in the regions of Ziguinchor, Kolda and Kaolack, the establishment of 146 committees for the protection of child *talibés*, and the formulation and dissemination of Islamic arguments against child begging. However, the Committee observes that the Government has not provided recent statistics on the number of child *talibés* who have benefitted from the protection provided by the GINDDI centre. ***The Committee requests the Government to continue its efforts for the protection of child talibés under 18 years of age from forced or compulsory labour, including begging. It requests it to continue providing information on the measures adopted, particularly in the framework of the programme financed by the PARRER, and the results achieved, with an indication of the number of talibé children who have been removed from the worst forms of child labour and who have benefitted from rehabilitation and social integration measures in the GINDDI centre. It also requests the Government to continue providing information on the measures adopted or envisaged in the context of the process of the modernization of the daaras system, and the progress achieved in the context of the harmonized school programme for Koranic schools.***

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

## Thailand

### ***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:

*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 requested a copy of section 287 of the Penal Code. In this regard, the Committee noted 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 noted the information in a document entitled "UNICEF urges quick government action on child pornography" of 11 October 2010, available on the UNICEF website, 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 noted 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 noted the Government's statement that, on this point, it was in the process of collecting information from relevant agencies. The Committee reminded 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 noted 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 indicated 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 noted the information in the Government's report that it had 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 noted 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" had 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) indicated that training was provided to labour inspectors and other key stakeholders on these Operational Guidelines in 2009. Nonetheless, the Committee noted 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 remained 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 noted 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 indicated 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 as the destination sites of vulnerable persons, and that this information was used by partnering agencies in the implementation of initiatives. The Government indicated 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 noted 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 noted the information in the Government's report that combating the trafficking in persons was a top priority for the Government, and specific policies announced in this regard included 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 noted the Government's statement that it was in the process of collecting information from relevant agencies on this point. It also noted the information in the Government's report that a National Plan for the Elimination of the Worst Forms of Child Labour (2009-14) was adopted in 2008. The Committee observed that although the commercial sexual exploitation of persons under 18 is prohibited by law, it remained 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 (2009-14), 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.*

1. *Trafficking.* The Committee noted the information in the Government's report that the Division on the Suppression of Offences against Children, Youth and Women undertook the collection and management of basic data. The Committee also noted 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 observed that the trafficking of children remained 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 noted 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 noted 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 indicated that there were no reported victims or offenders in 2007, and that in 2008, 23 child victims and 16 offenders were recorded. The Committee observed an absence of information on the penalties applied to these offenders, and observed 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 noted 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 had 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 noted 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 noted 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 included the provision of basic necessities, education, vocational training and assistance with psychological recovery. The Government also indicated 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 indicated that the Division on the Suppression of Offences against Children, Youth and Women coordinated with agencies involved in the rehabilitation and repatriation of trafficking victims. Lastly, the Committee noted the information in the Government's report that the National Policy and Plan for the Elimination of the Worst Forms of Child Labour (2009–14) included 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 noted the Government's statement that it was 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 noted 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 focused 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 noted the information in the Government's report that the Government had signed an agreement with the Government of Viet Nam on bilateral cooperation for eliminating trafficking in persons on 24 March 2008, and that pursuant to this agreement, the two Governments had developed an Action Plan for 2008–09. The Committee further noted that, pursuant to MOUs to combat human trafficking with the governments of Cambodia (signed in 2003) and Laos (signed in 2005), cooperation projects had been formulated and some measures implemented, including a workshop on human trafficking for Laos–Thai border officials. The Government also indicated that it was in the process of initiating similar bilateral MOUs with the Governments of Myanmar, China and Japan. The Government further indicated 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.

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

## Togo

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1984)**

*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 currently participating in a project to combat child labour through education implemented with the support of ILO–IPEC (the ILO–IPEC–CECLET project). It noted that various action programmes have been adopted in the context of this project.

The Committee notes that, in the context of the ILO–IPEC–CECLET project, a national survey on child labour in Togo (ENTE) was carried out and completed in 2010. The results of this study reveal that around six out of ten children (58.1 per cent) aged between 5 and 17 years, or approximately 1,177,341 children, are economically active at the national level. The ENTE also indicates that the incidence of children aged 5 to 14 years engaged in work that is to be abolished – meaning the performance by a child of prohibited work and, more generally, of types of work that should be eliminated as they are considered socially and morally undesirable by national law, including the provisions giving effect to the Convention – is 54.9 per cent, or approximately 894,360 children out of the 1,629,072 children aged 5 to 14 years in Togo. The results show that children aged 5 to 14 years generally work more in sectors such as agriculture (52.2 per cent) and domestic work (26.3 per cent) and others.

In this regard, the Committee notes the Government's indication that the ILO–IPEC–CECLET project resulted in 12,279 children aged 8–15 years being prevented from entering or being removed from the worst forms of child labour particularly in the informal economy and the agricultural sector. The Committee also notes that, in the context of this project, a national action plan (PAN) against child labour is being developed, the key strategies of which will be awareness raising; the strengthening of educational alternatives; the enforcement of the legislation; increasing knowledge about child labour; the development of direct action programmes for prevention and rehabilitation; and the improvement and coordination of action, monitoring and supervision.

The Committee takes due note of the efforts made by the Government to combat child labour in Togo. **The Committee requests the Government to continue its efforts to combat child labour, affording particular attention to children engaged 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 ILO–IPEC–CECLET project. Lastly, it requests the Government to provide information on the progress made in the development of the PAN and to provide a copy when it has been approved.**

*Article 2(1). Scope of application.* In its previous comments, the Committee noted that section 150 of the Labour Code of 2006 provides that children under 15 years cannot be employed in any enterprise or perform any type of work, even on their own account. The Committee requested the Government to provide information on the measures adopted to strengthen the capacities of the labour inspection services with a view to ensuring that children who work on their own account or in the informal economy benefit from the protection of the Labour Code of 2006.

The Committee notes the Government's indication that labour inspectors often benefit from training with a view to strengthening their capacities. The Committee therefore notes with *interest* that, to strengthen the action of the labour inspection services, particularly in relation to the supervision of the working conditions of children of working age, a number of measures have been adopted: (i) progressively increasing the number of inspectors through an active training policy in the National School of Administration; (ii) strengthening the network of areas covered, particularly by creating a regional labour directorate in each economic region and ten prefectural inspection services in densely populated areas, as well as creating new inspection areas in Lomé; and (iii) progressively allocating high-quality human resources to the inspection services. The Government also indicates that it envisages establishing, with the technical and financial support of the ILO, an information system on the activities of the labour inspection services to raise the visibility of the actions to be carried out to ensure compliance with the law. The Committee also notes that, according to information available to ILO–IPEC, actions have been carried out in the context of the ILO/IPEC/CECLET project with a view to strengthening

labour inspection. These include 24 observation and monitoring missions led by 12 inspectors between 1 October 2001 and 31 March 2012 in the agricultural sector, the informal urban economy, restaurants and sand carriers, during which 293 children (121 girls and 172 boys) were detected. ***Taking due note of the efforts made by the Government, the Committee requests it to continue providing information on the measures taken to strengthen the capacities of the labour inspection services to ensure that all children under 15 years of age, including those who work on their own account or in the informal economy, benefit from the protection afforded by the Convention, and on the results achieved.***

*Article 3(3). Admission to hazardous work from the age of 16 years.* In its previous comments, the Committee noted that certain provisions of Order No. 1464/MTEFP/DGTLs of 12 November 2007 authorize the employment of children from the age of 16 years on work likely to harm their health, safety or morals. The Committee also noted that section 12 authorizes children over 15 years of age to carry, drag or push loads of a weight of up to 140 kilograms for boys of 15 years of age employed in transport by wheelbarrow. The Committee also observed that there was no protection measure relating to the performance of these types of work. The Committee reminded the Government that under *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 by adolescents from 16 years of age, 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 notes the Government's indication that it takes into account its concern and undertakes to take the necessary measures to review Order No. 1464 to bring it into conformity with the provisions of the Convention, in consultation with the social partners in the near future. ***The Committee requests the Government to provide information on the progress made in reviewing Order No. 1464 with a view to bringing it into conformity with the requirements of Article 3(3) of the Convention. It requests the Government to provide a copy of the Order, once it has been revised.***

*Article 6. Apprenticeships.* The Committee notes that, within the context of the ILO-IPEC-CECLET project, a draft code on apprenticeship has been prepared, which sets out in detail the conditions which must be respected by an apprenticeship contract and under which such a contract cannot start before the completion of compulsory schooling and, in any case, not before 15 years of age. ***Hoping that the draft code on apprenticeship will be adopted in the near future, the Committee requests the Government to provide information on the progress made in that respect.***

*Article 8. Artistic performances.* The Committee previously noted 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 noted 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, the members of which include employers' and workers' organizations.

The Committee notes the Government's indication that a draft order has been submitted for approval by the National Council for Labour and Labour Laws. The draft order provides that, outside school hours and in the interest of art, science or education, the labour inspector may grant individual permits to children under 15 years of age to allow them to appear in public performances and to participate as actors or extras in films. The Government indicates that these derogations will be granted after consultation with the organizations of employers and workers concerned and will specify the number of hours of work authorized, and the working conditions. ***The Committee requests the Government to provide information on the progress made in the adoption of this draft order and to provide a copy of it, once it has been adopted. It also requests the Government to provide information on the granting of such individual permits in practice, once the draft order has been adopted.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (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:

The Committee noted the communication of the International Trade Union Confederation (ITUC) of 24 August 2010 and the Government's report. It also noted 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 noted 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 observed 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 noted 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 noted 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 noted 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 noted 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 observed 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 noted 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 noted 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 observed 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 observed 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, 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 expressed 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 noted 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 noted 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 noted that, in accordance with Order No. 1464/MTEFP/DGTLIS 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 observed 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 reminded 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 noted 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 noted 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 noted 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 noted 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

noted 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 noted 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 noted 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 noted 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 noted 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 noted that Togo has concluded a quadrilateral agreement with Benin, Ghana and Nigeria on border crime. It further noted 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.

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

## Trinidad and Tobago

### **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 urged the Government to take the necessary measures to ensure that legislation prohibiting the sale and trafficking of children under 18 was adopted.

The Committee notes that the Trafficking in Persons Act was adopted on 9 June 2011. The Committee notes with **satisfaction** that section 18 of the Trafficking in Persons Act prohibits the trafficking of children, specifically the recruiting, transporting, transferring or receiving of a child into Trinidad and Tobago or the harbouring of a child within the country for the purpose of exploitation. Section 18 of the Act also specifies that this offence carries a penalty of not less than 20 years imprisonment and a fine of US\$1 million. Lastly, the Committee notes that section 3 of the Trafficking in Persons Act defines a child as a person below the age of 18 years.

*Clause (c). Use, procuring or offering a child for illicit activities.* The Committee previously noted that section 46 of the draft Children Bill would prohibit the using, or causing a child to be used or to act as a courier to buy, sell, purvey or deliver drugs, and that section 47 of this Bill would prohibit these acts specifically in relation to the trafficking of drugs. Nonetheless, the Committee noted that the Children Bill was no longer under discussion by Parliament.

The Committee notes the Government's statement that the Children Bill is currently being reviewed. **The Committee, therefore, urges the Government to take the necessary measures to ensure that the Children Bill is reviewed and subsequently adopted, to prohibit the use procuring or offering of children under 18 years of age for the production and trafficking of drugs. It requests the Government to provide a copy of the Children Bill, once adopted.**

*Articles 3(d) and 4(1). Determination of hazardous work.* The Committee previously noted that the Factory Inspectorate Unit of the Ministry of Labour and Small and Micro Enterprise Development was developing a list of occupations deemed hazardous to children, based on guidelines provided by a National Seminar on Hazardous Occupations and Children, held in 2004.

The Committee notes the Government's statement that, while a list of hazardous occupations is not yet available, work has begun to create such a list. The Committee also notes the Government's statement that a governmental delegation attended the ILO Subregional Workshop on the Elimination of Hazardous Child Labour for Select Caribbean Countries in October 2011. It notes the Government's statement in its report submitted under the Minimum Age Convention, 1973 (No. 138), that the report of this delegation will contain recommendations to assist in the development of a list of occupations deemed hazardous. **Recalling that, pursuant to Article 1 of the Convention, each Member that ratifies the Convention shall take immediate measures to secure the prohibition of the worst forms of child labour as a matter of urgency, and noting that work on the list of occupations deemed hazardous to children has been ongoing since 2004, the Committee urges the Government to take the necessary measures to ensure the adoption of this list in the very near future, following consultation with the social partners. It requests the Government to provide a copy of this list once it has been adopted.**

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. 1. 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 the Forced Labour Convention, 1930 (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.*

2. *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.***

## United Arab Emirates

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1998)**

*Article 3(1) and (2) of the Convention. Minimum age for admission to, and determination of, hazardous work.*

The Committee previously requested the Government to take the necessary measures to ensure the promulgation of a ministerial order to determine the types of hazardous work prohibited for persons under 18 years of age.

The Committee notes the Government's information regarding the promulgation of Ministerial Order No. 803 of 2012, which amends Ministerial Order No. 1189 of 2010 relating to the rules and conditions governing the granting of work permits to young persons. The Committee notes with **satisfaction** that section 3 of this Order prohibits employers from engaging young persons under the age of 18 years in 31 types of hazardous work, including mineral extraction in mines and quarries, work in nightclubs and bars, work with explosives or dangerous machinery, welding of lead or silver and the slaughter of animals.

*Article 6. Minimum age for admission to apprenticeship.* The Committee previously observed that, according to section 42 of the Labour Code, the minimum age to enter into an apprenticeship contract (defined as the contract whereby the employer undertakes to provide the employee full vocational training) was 12 years. It also noted the Government's statement that the draft amended text of section 42 of the Labour Code provided 15 years as the minimum age for being accepted in training or vocational education, and observed that this text was going through the constitutional channels in the State.

The Committee notes the Government's statement that the draft amendment to section 42 of the Labour Code is still under examination and awaiting approval by Parliament. ***The Committee once again urges the Government to take the necessary measures to ensure that the draft amended section 42 is adopted in the very near future. It once again requests the Government to keep it informed of any progress in this regard, and to provide a text of the amended provision as soon as it has been adopted.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). Slavery and practices similar to slavery. Sale and trafficking of children for commercial sexual exploitation.* In its previous comments, the Committee noted the Government's indication that section 346 of the Penal Code prohibits the trafficking of children, and section 363 prohibits abetting, enticing or inducing a male or a female to commit prostitution. By virtue of Federal Act No. 51 of 2006, anyone who traffics a boy or girl under 18 years of age is liable to life imprisonment, and section 1 of this Act prohibits human trafficking for the purpose of exploitation, and defines exploitation to include all forms of sexual exploitation and prostitution. However, the Committee noted that, in its concluding observations of 5 February 2010, the Committee on the Elimination of Discrimination against Women expressed its serious concern at the persistence of trafficking in women and girls into the UAE for the purposes of labour and sexual exploitation (CEDAW/C/ARE/CO/1, paragraph 28).

The Committee notes the Government's information that, according to the annual report of the National Committee to Combat Human Trafficking in the UAE (NCCHT) of 2012, 17 cases of human trafficking and 51 victims were reported. The Committee notes with **interest** that 111 perpetrators were convicted. Moreover, the Government indicates that four of the 17 cases of human trafficking involved six child victims in total, all of them between 14 and 17 years of age. In these cases, the perpetrators received sentences of imprisonment ranging from three to ten years, as well as deportation. ***The Committee therefore encourages the Government to continue its efforts to strengthen the capacity of law enforcement agencies in order to ensure that persons who traffic in children for the purpose of sexual 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, prosecution,***

***convictions and penal sanctions applied for violations of the legal prohibition on the sale and trafficking of children for commercial sexual exploitation.***

*Articles 3(d) and 4(1). Hazardous work.* In its previous comments, the Committee urged the Government to take the necessary measures to ensure the promulgation of a Ministerial Order to determine the types of hazardous work prohibited for persons under 18.

The Committee notes the Government's information regarding the promulgation of Ministerial Order No. 803 of 2012, which amends Ministerial Order No. 1189 of 2010 relating to the rules and conditions governing the granting of work permits to young persons. The Committee notes with *satisfaction* that section 3 of this Order prohibits employers from engaging young persons under the age of 18 years in 31 types of hazardous work, including mineral extraction in mines and quarries, work in nightclubs and bars, work with explosives or dangerous machinery, welding of lead or silver, and the slaughter of animals.

*Article 5. Monitoring mechanisms. National Committee to Combat Human Trafficking (NCCHT).* In its previous comments, the Committee noted the indication in the Government's report that, following the adoption of Federal Law No. 15 of 2005, the Minister of Interior established the NCCHT. It noted that the NCCHT was presided over by the Under-Secretary of the Ministry of Justice, and included representatives of the Ministries of Interior, Foreign Affairs, Labour, Social Affairs, and the General Director of the Dubai Police, Zayed Corporation for Charity, and the Red Crescent. The Committee noted that the NCCHT meets frequently, and that during 2008–09 and 2010–11, it took numerous measures to address the problem of trafficking.

The Committee notes the Government's detailed information pertaining to the various measures that were adopted in 2011–12. Among these measures, the Committee notes the adoption of Ministerial Order No. 34 of 2011 relating to the organizational structure of the police directorates of El Sharqaa, Ras el Kheimah, 'Ajman, Om El Quwain, and El Fujairah, in which units to combat human trafficking crimes were created. Moreover, with a view to raising national awareness on crimes, the NCCHT has adopted a national strategy which envisages the convening of a number of awareness-raising events. In April 2011, for example, the first Gulf meeting to combat human trafficking crimes took place, in collaboration with the NCCHT, the Ministry of Justice, and the Office of the High Commissioner for Human Rights, among others, and the participation of the representatives of the Gulf Cooperation Council. This meeting aimed at identifying perspectives for cooperation, exchanging experiences, and finding the best means of reducing the phenomenon, and showcased the national strategies of law enforcement bodies to combat human trafficking. In December 2011, a regional training workshop was held in Abu Dhabi, reviewing the modern forms of human trafficking and child sexual exploitation, in collaboration with the UN Training and Certification Centre in the area of human rights for South-West Asia and the Middle East. During this workshop, several issues relating to child trafficking and child exploitation and their use in the sex industry were discussed. ***While encouraging the Government to pursue its efforts to strengthen the capacity of law enforcement officials responsible for the monitoring of child trafficking, the Committee once again requests the Government to provide information on the impact of the measures taken by the NCCHT and other institutions on the elimination of the trafficking of children under 18 years for labour or sexual exploitation.***

*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. Child victims of trafficking for sexual exploitation.* The Committee previously noted the allegation of the International Trade Union Confederation (ITUC) that the authorities of the United Arab Emirates (UAE) made no distinction between prostitutes and victims of trafficking for sexual exploitation, all of whom bear equal criminal responsibility for involvement in prostitution. The ITUC pointed out that trafficked persons were consequently not treated as victims and were not supported or protected. The Committee noted the Government's statement in reply to the ITUC's allegations that it considers persons who are exposed to sexual exploitation as victims who need protection and support through guidance and rehabilitation programmes. Nonetheless, the Committee noted that, in her statement of 18 October 2009 following her visit to the UAE, the UN Special Rapporteur on the sale of children, child prostitution and child pornography noted that the age of criminal responsibility of 7 years of age was too low, and encouraged the Government to ensure that all persons who are sexually exploited be treated as victims and not as delinquents. The Committee noted the Government's information that, with respect to the criminal responsibility of minors, the penalties provided for by the Penal Code do not, in fact, apply to children aged 7 to 18 years. In their case, the penalties which are applicable are prescribed by Federal Act No. 9 of 1976 relating to delinquents and vagrants. Section 63 of this Act provides that "Any young person who has completed the age of seven years and not completed the age of sixteen years shall be prescribed the provisions contained in the Child Act." In this regard, the Government referred to the sentence handed down by the Upper Federal Court, No. 64/15 of 29 January 1994, which stated that if a young person between 7 and 16 years of age commits a crime as prescribed in the Penal Code or other penal laws, he/she shall be subject to one or more of the measures specified in section 15 of the Child Act. These measures include reprimands; mandatory vocational training; or placement in a place of treatment, rehabilitation centre, or a place of education or reformation. Moreover, the Committee noted the Government's statement that it had adopted a policy to handle the persons involved in trafficking crimes and to treat them as victims by providing them with all means of support and family, health and psychological care. Observing that section 63 of Federal Act No. 9 of 1976 only applies to children between 7 and 16 years of age, the Committee urged the Government to ensure that children between 16 and 18 years of age trafficked to the UAE for sexual exploitation are treated as victims rather than offenders.



The Committee notes the Government's information that a draft Child Protection Law is in the process of review and finalization. This draft law specifies that the State shall take the necessary measures to protect children's rights against sexual exploitation (including child pornography), their exploitation in organized crime, their economic exploitation, and their exposure to begging. The Government also indicates that the draft Child Protection Law introduces several amendments to the measures provided for by Federal Act No. 9 of 1976. The draft law specifies that the penalties which may be imposed by a court on a delinquent child – defined as a person who has not completed his or her 18th year of age – are reprimands, the handing of the child to the authorities, judicial testing, the obligation to perform specific duties, working in the public interest, or consigning to one of the care or rehabilitation institutions appropriate to the case. The draft Child Protection Law provides that child victims of trafficking shall be placed in care institutions.

In this regard, the Committee notes the Government's detailed information regarding the role of the sheltering centre set up to welcome and care for victims of trafficking and sexual exploitation, the main functions of which are rescue, care, rehabilitation, follow-up and prevention. Child victims, therefore, benefit from such services as psychological care, educational skills and leisure courses, and the eventual transfer to similar institutions in the victim's country of origin. ***The Committee requests the Government to continue to take measures to ensure the rehabilitation and social integration of all child victims of trafficking for sexual exploitation under 18 years of age, and to provide information on the results attained. It requests the Government to provide information on the progress made in adopting the draft Child Protection Law, and to provide detailed information on the application of its provisions to child victims of trafficking for sexual exploitation, once adopted.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted that the statement of the UN Special Rapporteur on the sale of children, child prostitution and child pornography had indicated that there was a lack of an information system for gathering data on the sale and trafficking of children and the commercial sexual exploitation of children, in addition to a lack of analysis, recording, sharing of information, and reporting in this regard. The Special Rapporteur noted that the Government recognized the need for such a system and that it was in the process of establishing one.

The Committee notes that, following her visit to the UAE in April 2012, the UN Special Rapporteur on trafficking in persons, especially women and children, drew attention, in her end-of-mission statement, to the lack of comprehensive statistical information on the prevalence rate, forms, trends and manifestation of human trafficking in the UAE. In this regard, the Committee notes the Government's information that the Statistics and Security Analysis Centre has been established within the Federal Security Information Department of the Ministry of Interior, which is entrusted with the collection of all the information related to human trafficking crimes in the country, the follow-up on the development of crime detection, and the publication of security and statistical reports. ***The Committee once again urges the Government to pursue its efforts to establish a system to record and collect data on the number of children engaged in the worst forms of child labour and to report on child victims of crimes. It also once again requests the Government to provide any other information on the nature, extent and trends of the worst forms of child labour, in particular the sale and trafficking of children, studies and inquiries and statistical data on the number of children covered by the measures 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.

## United States

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)**

*Articles 3(d) and 4(1) of the Convention. Hazardous work and determination of types of hazardous work. Hazardous work in agriculture from 16 years of age.* The Committee previously noted that, as an exemption from section 213 of the Fair Labor Standards Act (FLSA), in agriculture, 16 is the minimum age under section 213(c)(1) and (2) of the FLSA for employment in occupations (outside family farms) that the Secretary of Labor finds and declares to be "particularly hazardous for the employment of children". The Committee therefore observed that section 213 of the FLSA authorizes children aged 16 and above to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health or well-being by the Secretary of Labor. In this regard, the Committee noted the Government's statement that the FLSA, which was developed through a process open to the participation of employers' and workers' representatives, does not authorize the Secretary of Labor to restrict young persons of 16 years and older from working in agriculture. The Government, referring to Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), which allows ratifying countries to permit 16 and 17 year olds to engage in types of work referred to by *Article 3(d)* on the condition that the health, safety and morals of the children are fully protected, stated that Congress considered it is safe and appropriate for children from the age of 16 to perform work in the agricultural sector.

However, the Committee noted the allegation of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) that a significant number of children under 18 years were employed in agriculture under dangerous conditions, including long hours and exposure to pesticides, with risk of serious injury. Nonetheless, the Committee observed that the National Institute for Occupational Safety and Health (NIOSH) had issued recommendations for changing the existing Hazardous Orders (HOs) regarding child labour, and noted the Government's indication that it

was evaluating an appropriate course of action regarding the NIOSH recommendations on agricultural HOs for youth employment.

The Committee takes due note that, based on the recommendations of the NIOSH, the Wage and Hour Division (WHD) of the Department of Labor (DOL) published a Final Rule on child labour provisions on 20 May 2010, which revised existing HOs to prohibit children under 18 from performing certain types of work, including: (i) working in poultry slaughtering and pressing plants; (ii) forestry services and timber tract management; (iii) operating balers and compacters designed for non-paper products; and (iv) operating wood chippers.

The Committee also 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 the United States of 29 September and 1 October 2010, entitled “Internationally recognized core labour standards in the United States of America” that health and safety standards for child farm workers are severely lacking, and that from 2005 to 2008, at least 43 children died in work-related accidents in farms. In this regard, the Committee notes the statement in the document available on the website of the DOL entitled “Notice of proposed rulemaking to amend the child labor in agricultural regulations – Frequently asked questions” that “[c]hildren employed in agriculture are some of the most vulnerable workers in America. The fatality rate for young agricultural workers is four times greater than that of their peers employed in non-agricultural workplaces. Furthermore, the injuries suffered by young farm workers tend to be more severe than those suffered by non-agricultural workers. The current federal agricultural child labor rules were issued over 40 years ago and have never been updated or even revised”.

The Committee further notes the Government’s statement that it remains acutely aware of the need to fully protect young agricultural workers, including those between 16 and 18 years of age, and that it remains fully committed to continuing to ensure full compliance with the Convention, as informed by Recommendation No. 190. In this regard, the Committee notes the Government’s indication that the outreach programmes on hazardous work of the Occupational Safety and Health Administration (OSHA) prioritize employee education and awareness, focusing upon less experienced workers, such as 16 and 17 years old employees in agriculture.

The Committee notes the information in the Government’s report that the DOL had issued a Notice of Proposed Rulemaking in September 2011, containing proposals to revise the child labour agricultural HOs, as well as some non-agricultural HOs. The Government indicates that the proposal, if finalized, would adopt the remaining specific NIOSH recommendations on existing agricultural HOs, to increase the parity between agricultural and non-agricultural child labour prohibitions. This proposal would create an HO to prohibit the employment of persons under the age of 18 in occupations in farm product and raw materials wholesale trade industries such as work in country grain elevators, grain bins, silos, feed lots, feed yards, stockyards, livestock exchanges and livestock auctions. Additionally, this proposal includes several revisions to existing agricultural HOs, such as prohibiting hired farm workers under 16 years of age from: the planting, cultivating, topping, harvesting, baling, barning, and curing of tobacco; any work that falls within the Environmental Protection Agency classification of pesticide handler; occupations involving working inside a manure pit; work in the agricultural sector such as construction, wrecking and demolition and excavation; certain tasks involving working with or around animals; and operating all power-driven machines.

However, the Committee notes with *serious concern* that this proposed rule was subsequently withdrawn in April 2012. ***The Committee, therefore, strongly urges the Government to reconsider the withdrawal of the proposals contained in the Notice of Proposed Rulemaking of 2 September 2011, which would have increased the parity between agricultural and non-agricultural child labour prohibitions by prohibiting some tasks associated with agricultural work to children under 18 and strengthening the protection provided to children under 16 years working in agriculture. In this regard, the Committee urges the Government to take the necessary measures to ensure that young persons between 16 and 18 years of age working in agriculture are only permitted to perform work in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that their health and safety is protected and that they receive adequate specific instruction or vocational training. It requests the Government to provide information on progress achieved in this respect, in its next report.***

*Article 4(3). Examination and periodical revision of the types of hazardous work.* The Committee previously noted that the HOs determining the types of work prohibited to children under 18 were originally adopted in 1939 and 1960 for non-agricultural occupations and in 1970 for agricultural occupations. The Committee also noted that, pursuant to an inter-agency agreement between the WHD and the NIOSH, the NIOSH had issued several recommendations regarding revising the existing HOs to better protect children from particularly hazardous work. The Committee requested the Government to take immediate measures to ensure that the NIOSH’s recommendations for revising the existing HOs were pursued and that the amendments to the HOs were adopted pursuant to these recommendations.

The Committee notes with *satisfaction* that the Final Rule on child labour provisions published by the WHD in May 2010, based on the recommendations of the NIOSH, revised seven existing non-agricultural HOs to prohibit children under 18 from performing additional types of work, including: the tending, riding upon, working from, repairing, servicing, or disassembling an elevator, crane, derrick, manlift (including of truck- or equipment-mounted aerial platforms known as scissor lifts, boom-type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks), hoist, or high-lift truck (including backhoes, front-end loaders, skid loaders, skid-steer loaders, bobcat

loaders, and stacking trucks); cleaning power-driven meat processing equipment; operating power-driven hoists; and operating reciprocating saw and abrasive cutting disks.

*Articles 5 and 7. Monitoring mechanisms and penalties. Hazardous work in agriculture.* The Committee previously noted the AFL–CIO’s indication that an estimated 100,000 children suffer from agriculture-related injuries annually in the United States and that very few inspections take place in agriculture. The Committee also expressed its concern at the decreasing number of child labour investigations conducted in the agricultural sector. However, the Committee noted the Government’s indication that the WHD intended to hire additional wage and hour inspectors. The Committee urged the Government to take measures to ensure that the necessary monitoring mechanisms are in place so that all farms are inspected and monitored and provide information on the inspections carried out in this regard.

The Committee notes the information in the Government’s report that the WHD has hired more than 300 new investigators since the summer of 2009. The Government states that more than half of the WHD’s 1,000 investigators speak a language in addition to English, improving the Division’s capacity to reach some of the more vulnerable workers in the workforce with limited English proficiency. The Government indicates that with these added resources, WHD investigators have been able to conduct agricultural investigations on evenings and weekends, when children are most likely to be working in the fields. The Committee also notes the Government’s statement that the WHD is now able to issue steeper fines for child labour violations that cause the death or serious injury of any employee under 18 years of age. In this regard, the Committee notes with *interest* that the Final Rule on child labour provisions of 2010 amended the child labour civil money penalty to provide for up to US\$50,000 for each violation that causes the death or serious injury of an employee under 18 years of age (which can be doubled if the violation is repeated or wilful). Prior to the 2008 amendment, the maximum civil money penalty that could be assessed for any child labour violation was US\$11,000.

The Committee further notes the detailed information in the Government’s report regarding concluded cases in which child labour violations were found. The Government indicates that there were 887 such cases in 2009, 684 cases in 2010 and 720 cases in 2011. The total child labour civil monetary penalties assessed were US\$4,031,564 in 2009, US\$2,120,472 in 2010 and US\$2,159,699 in 2011. Moreover, the Government indicates that the total number of minors found working in these cases (in violation of the FLSA) was 3,448 in 2009 (including 109 in the agricultural industry), 3,333 in 2010 (including 49 minors in the agricultural industry) and 1,873 in 2011 (including 29 minors in the agricultural industry). The Government states that although the number of minors found employed in agriculture in violation of the FLSA declined between 2009 and 2011 (from 109 minors in 2009 to 29 minors in 2011), the WHD’s enforcement hours in agriculture increased by approximately 8 per cent from 2009 to 2010 and by approximately 1.3 per cent from 2010 to 2011.

In addition, the Committee notes the Government’s statement that the WHD is engaging local communities, social service agencies and state migrant education consultants to provide an alternative to work for children whose parents are in the fields and to provide education on child safety. For example, the Committee notes the Government’s indication that, as a result of the extensive child labour law violations found during the 2009 blueberry harvest season, the WHD implemented the 2010 Blueberry Harvest Initiative. This Initiative constituted an enforcement programme which received considerable media coverage and contributed to employers taking steps to ensure that children were not working in the fields. Moreover, the Committee notes the Government’s indication that protecting children at work, including 16 and 17 years olds employed in agriculture, is an important aspect of OSHA’s mission, and that OSHA continues to target its enforcement efforts in areas where injuries and accidents are most serious, many of which involve young agricultural workers. The Government’s report indicates that OSHA participated in more than 300 outreach events in the first half of 2011 which focused on children under 18 years. The Government indicates that OSHA’s Heat Illness Prevention campaign (directed towards agricultural and construction workers) includes a special focus on outreach to new workers, like young agricultural employees, and that the Grain Handling Initiative, implemented by OSHA since 2008, significantly increased enforcement and inspection activities within this industry, to reduce accidents and fatalities, including for workers under 18 years of age. ***Taking due note of the measures taken, the Committee urges the Government to pursue its efforts to strengthen the capacity of the institutions responsible for the monitoring of child labour in agriculture, to protect child agricultural workers from hazardous work. It requests the Government to continue to provide information on measures taken in this regard, and on the results achieved.***

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

## Uzbekistan

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2008)***

The Committee notes the Government’s reports dated 17 April, 4 June and 20 November 2012. The Committee also notes the communication of the International Trade Union Confederation (ITUC) dated 31 August 2012, as well as the Government’s reply thereto dated 24 October 2012, and the communication of the International Organisation of Employers (IOE) dated 22 October 2012. The Committee further notes the communication from the Council of the Federation of Trade Unions, dated 11 October 2012, as well as the communication of the Chamber of Commerce of Uzbekistan, dated 17 October 2012. In addition, the Committee takes note of the report of the ILO technical advisory mission that took place in Tashkent, Uzbekistan, from 2 to 5 May 2012.

*Article 3(a) and (d) of the Convention. Worst forms of child labour. 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 in hazardous work, and 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. The Committee further noted the Government’s statement that the participation of children below 18 years of age in activities on a family farm is not an infringement of the Convention. The Government further indicated that the Association of Farmers of Uzbekistan, the Council of the Federation of Trade Unions and the Ministry of Labour and Social Protection had adopted, in May 2011, the “Joint Statement concerning the inadmissibility of using forced child labour in agricultural works”, which asserted that virtually all cotton was harvested by farm owners who had no interest in making extensive use of children for the harvesting of cotton.

However, the Committee also noted the assertion of the IOE that, despite the legislative framework against forced labour, school children (estimates ranging from half a million to 1.5 million school children) are forced by the Government to work in the national cotton harvest for up to three months each year. The Committee also noted the ITUC’s allegations that State-sponsored forced child labour continued to underpin Uzbekistan’s cotton industry. The ITUC stated that despite the Government’s claim that almost all of the cotton in Uzbekistan is produced on private farms, the reality is rigid state control of all aspects of the cotton industry, whereby the forced mobilization of children is organized and enforced by authorities. The ITUC referred to a 2010 study which found that the mobilization of children during the cotton harvest by the central Government was systematic, utilized the school system, and left little room for choice on the part of children, their parents, school authorities and even farmers. The ITUC further stated that approximately half of all cotton picked in Uzbekistan is the result of forced child labour, and that it is estimated that hundreds of thousands of children are forced out of school each year to pick cotton during school hours. The ITUC alleged 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.

The Committee further noted the conclusions from several United Nations bodies regarding the practice of mobilizing school children for work in the cotton harvest. In this regard, it 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 experienced by many school children as a result of this participation (2 June 2006, CRC/C/UZB/CO/2, paragraphs 64–65). Moreover, the Committee on the Elimination of Discrimination Against Women expressed its concern regarding the educational consequences of girls and boys working during the cotton harvest season (26 January 2010, CEDAW/C/UZB/CO/4, paragraphs 30–31) and the UN Human Rights Committee stated that it remained concerned about reports that children are still employed and subjected to harsh working conditions, in particular for cotton harvesting (7 April 2010, CCPR/C/UZB/CO/3, paragraph 23).

In addition, the Committee noted the information from UNICEF concerning the cotton harvest of autumn 2011. UNICEF completed observation visits in 12 regions, finding that: (i) children aged 11–17 years old had been observed working full time in the cotton fields across the country; (ii) the mobilization of children had been organized by way of instructions passed through *Khokimyats* (local administration), whereby farmers are given quotas to meet and children are mobilized by means of the education system in order to help meet these quotas; (iii) in some instances, farmers had also made a private arrangement with schools to pick their cotton often in return for material resources or financial incentives for the school; (iv) children were predominantly supervised in the fields by teachers; (v) in over a third of the fields visited, children stated that they were not receiving the money themselves; (vi) quotas for the amount of cotton children were expected to pick generally ranged between 20 to 50 kilos per day; (vii) the overwhelming majority of children observed were working a full day in the field and as a result, were missing their regular classes; (viii) children worked long hours in extremely hot weather; (ix) pesticides were used on the cotton crop that children spent hours hand picking; (x) some children reported that they had not been allowed to seek medical attention even though they were sick; and (xi) that the only noticeable progress towards the eventual elimination of the use of children in cotton picking was observed in the Fergana region.

Additionally, the Committee noted that the Committee on the Application of Standards of the International Labour Conference (Conference Committee), in June 2011, echoed the deep concern expressed by United Nations bodies, the representative organizations of workers and employers and non-governmental organizations, about the systematic and persistent recourse to forced child labour in cotton production, involving an estimated 1 million children. The Conference Committee emphasized the seriousness of such violations of the Convention and urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children below the age of 18.

The Committee notes the statement of the IOE in its most recent comment that the Government is ignoring the issue of forced child labour in the country. The IOE states that the information and data available from national media and other

organizations at the national and international levels indicate that the cotton harvest of 2012 does not differ, or slightly differs, from the previous one. The IOE states that, although the Uzbek Prime Minister issued an annual order in early August 2012 to ban the use of both forced and voluntary child labour during the 2012 cotton harvest, and despite the wide diffusion of the order in schools in the country, the extensive use of labour of teenagers and young persons was registered in all regions of the country following the disposition to formally commence the national cotton harvest.

The Committee also notes the comments of the ITUC that the forced mobilization of children by the State to pick cotton during the harvest is serious, systematic and continuous, and that this practice takes place year after year, despite the Government's denials. The ITUC indicates that during the autumn 2011 cotton harvest, children were forced to pick cotton by hand during term time, under threat of punishment, such as expulsion from school, in order to meet quotas set for each region by the central Government. The ITUC also states that independent monitors assessing the 2011 cotton harvest reported that in some more densely populated areas, such as Andijan, some schools took children out of school to pick cotton for 15 to 20 days, while others sent children to pick cotton after classes. However, the ITUC alleges that the situation was reported to be much worse in less densely populated regions, where children had to work for long hours. The ITUC reiterates that the participation of children in the annual cotton harvest is not a result of poverty or family need, but that this participation is organized and enforced by the authorities, channelled through local administration and directly benefits the Government. The ITUC reasserts that during the harvest, cotton quotas are set for each region, and that regional governors (*Hokims*) are appointed to ensure the delivery of these quotas. Such quotas are subdivided down through the hierarchy of state institutions, and the regional governor assigns schools quotas for harvesting cotton. Directors of schools and colleges face dismissal if their institution's cotton quota is not met, and parents have little choice but to allow their children to participate in the harvest. In addition, the ITUC indicates that conditions appear to be worse for students above the age of 16 who attend colleges, and that these children may be sent to work on remote farms for up to two and half months in extremely poor conditions.

The Committee notes the statement of the Chamber of Commerce of Uzbekistan that it does not consider the issue of forced child labour, or the practice of employing children for cotton picking, to be an issue in the country. The Committee also notes the statement of the Council of the Federation of Trade Unions in Uzbekistan that the Government's report is a genuine reflection of the measures taken by the Government to implement the Convention.

The Committee notes the Government's statement that a distinction should be made between legitimate child work and activities prohibited as one of the worst forms of child labour. The Government also indicates that the increased politicization of the alleged large-scale exploitation of the forced labour of children in the cotton harvest is a method of unfair competition in the global cotton market. The Committee further notes the Government's statement that the Government Order No. 82 of 26 March 2012 approved the Plan of additional measures for the implementation of the Forced Labour Convention, 1930 (No. 29), and the Worst Forms of Child Labour Convention, 1999 (No. 182), 2012–13 (Plan on additional measures). Noting the copy of this Plan on additional measures submitted with the Government's report, the Committee observes that this Plan includes measures to maintain effective monitoring for the prevention of forcing children to work, measures to strengthen the monitoring of the attendance of pupils and steps to establish personal responsibility of heads of educational institutions concerning the full attendance and safety of pupils. The Government also states that pursuant to Letter No. 01-523 of the Ministry of Education dated 8 September 2012, the Ministry of Education of the Autonomous Republic of Karakalpakstan and the central education boards of Uzbek provinces and Tashkent were warned not to allow pupils in general education schools to be employed as cotton pickers. The Government also refers to the report of a non-governmental organization, wherein a person interviewed stated that the cotton harvest in the region of Khorzem this year was different from previous years, as children were not picking cotton but continued to attend school. The Government states that this difference was due to the ban on children picking cotton. However, the Committee observes that this report also contains several statements that children continue to be mobilized to work in the cotton harvest in other regions, particularly students in lyceum and colleges.

The Committee, therefore, observes that while several sources indicate that there may have been a decline in the number of children under the minimum age for admission to work who are compelled to work in the cotton harvest, children between 16 and 18 years of age who attend colleges continue to be forced to work during this period, instead of attending school. In this regard, the Committee recalls that the prohibition on the worst forms of child labour, including forced labour and hazardous work, applies to all children *under the age of 18*. Therefore, in light of the broad consensus among the United Nations bodies, the representative organizations of workers and employers and non-governmental organizations with respect to the continued practice of mobilizing school children for work in the cotton harvest, often under hazardous conditions, the Committee must express its *serious concern* regarding the Government's continued insistence that children are not involved in the cotton harvest in Uzbekistan. ***The Committee urges 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. It requests the Government to provide information on progress made in this regard in its next report.***

*Articles 5 and 6. Monitoring mechanisms and programmes of action to eliminate the worst forms of child labour.* The Committee previously noted the Government's indication that a programme had been approved for on-the-ground monitoring to prevent the use of forced labour by school children during the cotton harvest. The Government also indicated that the supervision of labour legislation and regulations (including the prohibition on employing children in

adverse working conditions) was carried out through specifically authorized legal and technical inspections of the Ministry of Labour and Social Protection and trade union officials. The Government indicated that the Ministry of Labour and Social Protection, in collaboration with the social partners, had implemented workshops to raise awareness among farmers on the inadmissibility of the use of child labour in agricultural works, and that the State Labour Inspection continued to carry out monitoring in farms.

The Committee also noted the IOE's indication that it remained uncertain as to whether the implementation of the measures adopted would be sufficient to address the deeply rooted practice of forced child labour in the cotton fields. It also noted the ITUC's statement that the monitoring of forced child labour needed to be completely independent. In addition, the Committee observed that the Conference Committee expressed regret that, despite the Government's indication that concrete measures had been undertaken by the labour inspectorate regarding violations of labour legislation, no information was provided on the number of persons prosecuted for the mobilization of children in the cotton harvest.

The ITUC states that evidence indicates that the legislative and policy measures in place have had little effect in eradicating the ongoing and systematic mass mobilization of forced child labourers for the cotton harvest. The ITUC indicates that there is a vast disparity between the legal and policy situation and the continued practice of state-sponsored forced labour. It alleges that Government has not implemented its own national laws and policies.

The Committee notes the Government's statement that, as part of the Plan on additional measures, the Ministry of Labour and Social Protection, the Ministry of Internal Affairs, with the Council of Ministers of the Autonomous Republic of Karakalpakstan, and the administration of the regions and Tashkent, will establish systematic monitoring to provide effective control to prevent enterprises, establishments and organisations from forcing children to work, and to ensure that the legislation on the working conditions of minors is respected. In this regard, the Government states that the Council of the Federation of Trade Unions of Uzbekistan has designed a structure to ensure the effective monitoring of the prohibition to compel children to work, and to ensure compliance with the relevant legislation concerning working conditions for minors and the Convention. This structure is composed of working groups established by the chairpersons of local trade union associations. The Government states that these working groups examined companies and organizations in Uzbekistan to assess compliance with the minimum age for employment and the prohibition of the worst forms of child labour, but that no evidence was found of the use of the worst forms of child labour. The Government further indicates that on 27 June 2012, the Association of Private Farmers, the Committee of the Women of Uzbekistan and the Ministry of Labour and Social Protection adopted a joint decision to conduct local outreach campaigns among farmers and that seminars for private farmers on the ILO Conventions were held in August 2012 in every region in the country. Moreover, the Government indicates that at a meeting of the special national working group for organizing nationwide awareness-raising campaigns to prevent the recruitment of students for cotton-picking, special local units of this working group were formed in August 2012. In addition, the Committee notes the Government's statement that the State Labour Inspectorate of the Ministry of Labour and Social Protection performs regular check of compliance with labour legislation governing minors. The Government indicates that in its 2012 inspections, the State Labour Inspectorate identified 37,818 cases of labour law violations, issued 1,273 instructions and initiated 1,221 administrative proceedings. However, the Committee once again notes with *concern* an absence of information as to whether any of the violations detected during these inspections pertained specifically to the worst forms of child labour, particularly the forced labour of, or hazardous work by, children under 18 years of age engaged in the cotton harvest.

The Committee once again observes that the Government has taken significant awareness-raising and preventive measures regarding the mobilization of children during the cotton harvest. In the Committee's view, this would appear to amount to an implicit and tacit admission that such child labour occurs within the country. The Committee must, therefore, once again note with *regret* the absence of information from the Government on the concrete impact, if any, of the monitoring activities undertaken pursuant to the Plan on additional measures, by the Ministry of Labour and Social Protection and the social partners. ***The Committee accordingly requests the Government to provide information on the concrete impact of the measures taken to monitor the prohibition of the use of forced and hazardous child labour in the agricultural sector. It also requests the Government to provide specific information on the number and nature of violations detected specifically with regard to the mobilization of children under 18 to work in the cotton harvest. Where possible, the information should be disaggregated by sex and age.***

*Part V of the report form. Application of the Convention in practice. Forced or compulsory labour in cotton production and hazardous work.* The Committee previously noted the Government's assertion that children are not involved in the cotton harvest. The Committee considered it essential that independent monitors be granted unrestricted access to document the situation during the cotton harvest. The Committee also noted the statements in 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 of 2010 from the European Apparel and Textile Confederation (EURATEX) and the ETUF–TCL indicating 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 noted that the Conference Committee expressed its serious concern regarding the insufficient political will and the lack of transparency of the

Government to address the issue of forced child labour in cotton harvesting. It 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. The Conference Committee also strongly urged the Government to receive this ILO high-level tripartite observer mission in time to report back to this Committee, and strongly encouraged the Government to avail itself of ILO technical assistance, and to commit to working with ILO-IPEC. In this regard, the Committee noted the statement of the Government indicating that technical assistance or alternative cooperation with ILO-IPEC could not be reduced only to the issues of forced labour of children in cotton harvesting. In addition, the Committee noted the statement of UNICEF that its findings following the visits undertaken in 12 regions of the country were only snapshots that could not replace substantive and independent monitoring under the auspices of the ILO, which UNICEF continued to advocate for.

The Committee notes the statement by the IOE that the Government has not shown any will to accept the tripartite observer mission recommended by the tripartite Conference Committee. The Committee also notes that the ITUC, in its communication, urges the Government to invite an ILO high-level tripartite observer mission to visit the country, and also to accept ILO technical assistance to eradicate forced child labour in the cotton industry, including through work with ILO-IPEC. The ITUC further states that once again during the 2011 harvest, the cotton fields were strictly patrolled by police and security personnel, in an attempt to prevent independent monitoring, and that persons seeking to monitor the harvest experienced harassment and intimidation.

The Committee notes the Government's statement that it has made every effort to eliminate the worst forms of child in the country, and that for this reason, there are no grounds for inviting an ILO high-level mission to the country to examine the use of child labour. The Government states that this should not be seen as refusal to cooperate with the ILO, and that the examination of the application of the Convention should address all of the worst forms, not only cotton-picking. The Government further indicates that a seminar entitled "Implementation of ILO Conventions ratified by Uzbekistan" was held in May 2012. The Government states that this seminar was organized by the Ministry of Labour and Social Protection, and included participation of ILO officials from both Headquarters and the Moscow Bureau, during which participants had an opportunity to discuss various issues related to the fulfilment by Uzbekistan of its commitments within the ratified ILO Conventions. In this regard, the Committee notes the statement in the mission report of the Technical Advisory Mission that the ILO delegation attending the seminar underlined that the Technical Advisory mission should not be seen as replacing the high-level mission which had been requested by the supervisory bodies. This mission report also indicates that the ILO delegation indicated to the Government that the Office was prepared to pursue technical assistance, and that the delegation highlighted that high-level tripartite missions were not sanctions, but instead an important way forward in helping to verify facts and resolve implementation gaps.

Therefore, the Committee must once again note with *serious concern* that the Government has yet to respond positively to the recommendation to accept a high-level tripartite observation mission. The Committee's concerns are reinforced by the evident contradiction between the Government's position that children are not removed from school for work in the cotton harvest, and the views expressed by numerous UN bodies and social partners that this worst form of child labour remains a serious problem in the country. It, therefore, considers an ILO mission to be both necessary and appropriate, to fully assess the situation of children's engagement in the cotton sector. *The Committee, therefore, urges 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. It also strongly encourages the Government to avail itself of ILO technical assistance in respect of the situation in question.*

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 102nd Session and to reply in detail to the present comments in 2013.]*

## Bolivarian Republic of Venezuela

### **Night Work of Young Persons (Industry) Convention, 1919 (No. 6)** (ratification: 1933)

The Committee takes note of the Government's report. It also notes the comments by the Independent Trade Union Alliance (ASI) of 14 August 2012.

*Article 2 of the Convention. Exceptions to the prohibition regarding night work by young persons in industrial undertakings.* In its previous comments, the Committee noted section 257 of the Basic Labour Act of 1997, which provides that the working day for young persons under 18 years of age must fall between 6 a.m. and 7 p.m. Section 257 also allows exceptions on special grounds to the prohibition of night work by young persons, when deemed appropriate, in cooperation with the labour inspector, by the bodies responsible for the supervision of minors. The Committee asked the Government to provide information on the special grounds for such exceptions and the conditions in which such permission may be granted.

The Committee notes the promulgation of the Basic Labour and Workers Act (*Gaceta Oficial*, 20 May 2012, No. 6076). The Committee notes the Government's indication that section 32 establishes a general prohibition of child

labour for children under 14 years of age, except for artistic and cultural performances authorized by the authority responsible for the protection of minors. Section 32 furthermore provides that the protection of minors at work is regulated by the Act concerning the protection of children and young persons of 1998. However, the Committee notes with **concern** that the new Basic Labour and Workers Act of 2012 no longer contains a provision prohibiting night work for young persons, unlike the Basic Labour Act of 1997. Moreover, the Committee had previously observed that the Act concerning the protection of children and young persons of 1998 did not contain any provision on the night work of young persons.

In these circumstances, the Committee is bound to recall again that *Article 2(1)* of the Convention states that young persons under 18 years of age shall not be employed during the night in any industrial undertaking, other than an undertaking in which only members of the same family are employed and in the cases listed in *Article 2(2)*. **The Committee therefore urges the Government to take the necessary measures to ensure that national legislation is brought into compliance with the Convention by reinserting a provision prohibiting the night work of young persons under 18 years of age. In case such a provision were to include special grounds on which exceptions to the prohibition of night work by young persons may be granted, as previously provided for by section 257 of the Basic Labour Act of 1997, the Committee requests the Government to supply information on these special grounds and the conditions in which such permission may be given, indicating in particular, the age of the young persons and the types of work they are authorized to perform.**

## Yemen

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

*Article 1 of the Convention and Part V of the report form. National policy designed to ensure the effective abolition of child labour and practical application of the Convention.* In its previous comments, the Committee noted the work of the Child Labour Unit (CLU) attached to the Ministry of Social Affairs and Labour (MoSAL) and referred to a child labour survey on working children the Government was commencing in collaboration with the ILO.

The Committee notes the findings of the first national Child Labour Survey carried out in 2010 by the Central Statistical Organization (CSO) in collaboration with ILO–IPEC which were released in July 2012. The Committee notes that 21 per cent of children between the ages of 5 and 17 are employed. While 11 per cent of 5–11 year-olds are employed, this figure increases to 28.5 per cent among 12–14 year-olds and further to 39.1 per cent among 15–17-year-olds. The employment rate of male children at 21.7 per cent is slightly higher than the employment rate of female children at 20.1 per cent. The two leading sectors that employ children are agriculture (56.1 per cent) and private households (29 per cent). A smaller proportion of children are in wholesale and retail trade (7.9 per cent). The majority of working children are unpaid family workers (58.2 per cent). **Expressing its concern at the large number of working children in the country, especially in rural areas, the Committee strongly encourages the Government to pursue its efforts towards the effective reduction and elimination of child labour. It requests the Government to provide information on national policy measures designed to ensure the effective elimination of child labour, and on the results achieved. The Committee further requests the Government to provide information on the manner in which the Convention is applied in practice, including extracts from the reports of inspection services and information on the number of inspections aimed, in whole or in part, at addressing child labour as well as on the number and nature of violations detected involving children.**

*Article 2(1). Scope of application.* In its previous comments, the Committee noted that, pursuant to sections 3(2) and 53 of the Labour Code, several categories of workers are excluded from the scope of application of the Labour Code, such as self-employed workers, casual workers, household servants and some agricultural workers, in addition to young persons working with their family under the supervision of the head of the family. The Committee further noted that section 5 of Ministerial Order No. 56 of 2004 (Ministerial Order No. 56) states that the minimum age of entering employment shall not be less than the age of completion of compulsory education, which is 15 years. The Committee also noted the Government's indication that the current exemptions in the Labour Code would be addressed in forthcoming amendments to the Labour Code. **The Committee reiterates its hope that the amendments to the Labour Code will soon be adopted and requests the Government to provide information on any new developments in this regard, in particular concerning the categories of workers excluded from the scope of application of the Labour Code by virtue of sections 3(2) and 53.**

*Article 2(1) and (2). Minimum age for admission to employment or work.* The Committee previously noted that section 5 of Ministerial Order No. 56 states that the minimum age of entering employment shall not be less than the age of completion of compulsory education, which is 15 years, while section 133 of the Yemeni Child Rights Law of 2002 establishes the general minimum age for admission to work at 14 years. The Committee also noted the Government's indication that an amendment modifying the minimum age for working children addressing this contradiction is being prepared. Noting that the Government specified a minimum age for admission to employment or work of 14 years at the time of ratification, the Committee draws the attention of the Government towards the possibility of raising the minimum age by notifying the Director-General of the ILO in virtue of *Article 2(2)* of the Convention. **The Committee once again expresses the hope that the draft amendment which modifies the general minimum age in the relevant Acts will be adopted in the very near future, and requests the Government to provide a copy of this legislation once adopted.**



*Article 2(3). Compulsory education.* The Committee previously noted the Government's basic education development strategy (BEDS), as well as the basic education development project by the World Bank, which aims to assist Yemen in expanding the provision of quality basic education to all (grades 1–9), with special attention to gender equity.

The Committee notes from the findings of the 2010 Child Labour Survey referred to above that the school attendance rate for children 6–14 years old (ages for compulsory schooling) stands at 73.6 per cent. Female and rural children are particularly affected by low school attendance rates. While among 6–17 year-olds, the attendance rate among girls is 63.4 per cent, this rate is 77.2 per cent among boys. The lowest school attendance rate is estimated for rural females at 57.5 per cent as compared to 82.9 per cent for urban boys.

The Committee also notes the information from the UNESCO *Education for All Monitoring Report 2011*, that in 2008, Yemen had the most children out of school in the region, more than 1 million (regional overview: Arab States, page 3). The Committee furthermore notes the Secretary-General report on children and armed conflict, which, in 2011 recorded 211 attacks on schools and the disruption of schooling of some 200,000 children (A/66/782-S/2012/261, paragraph 168). The Committee also notes that the basic education development project by the World Bank had to be suspended in June 2011 due to the much deteriorated political and security situation. Yet the suspension of activities was lifted in January 2012 and the project was extended to the end of 2012 (World Bank document, Report No. 69061-YE, 29 June 2012, paragraphs 4–5, 23).

The Committee expresses *serious concern* at the number of children who do not attend school and the significant gap in the gross enrolment rate for basic education for girls and boys. ***Considering 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 as soon as possible, within the framework of the basic education development strategy. The Committee requests the Government to provide information on measures taken in this respect, and on the impact of these measures, particularly with regard to the enrolment, attendance and completion rates of girls and children in rural areas.***

*Article 3(1). Minimum age for admission to hazardous work.* The Committee previously noted that section 49(4) of the Labour Code states that it is prohibited to employ a young person under 15 years of age in hazardous work. The Committee also noted the Government's information that, while section 4 of Ministerial Order No. 56 specifies that no person under 18 years may be accepted for any type of employment or 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, this section did not repeal the relevant provisions in the Labour Code. The Committee further noted the Government's indication that the forthcoming amendments to the Labour Code would take into account the Committee's observation on the contradictory provisions in the Labour Code and Ministerial Order No. 56 concerning the age of admission to hazardous work.

The Committee notes from the findings of the 2010 Child Labour Survey referred to above that 50.7 per cent of child labourers are engaged in hazardous work. ***Considering these circumstances, the Committee again urges the Government to ensure that the relevant amendments to the Labour Code are adopted in the near future to prohibit the employment of children under 18 years in hazardous work. It requests the Government to provide information on developments in this regard.***

*Article 6. Minimum age for admission to apprenticeship.* The Committee previously noted that the Labour Code does not contain a minimum age for apprenticeships, and recalled that by virtue of *Article 6* of the Convention, a young person must be at least 14 years of age to undertake an apprenticeship. The Committee noted the Government's statement that it would take into account the Committee's comments on this issue when amending the Labour Code. ***The Committee reiterates its requests to the Government to take the necessary measures to ensure that the amendments to the Labour Code will be in conformity with Article 6 of the Convention. It asks the Government to provide information on any developments in this regard in its next report.***

*Article 7. Light work.* In its previous comments, the Committee noted that section 6 of Ministerial Order No. 56 states that the exemption of employment or work of persons between 13 and 15 years may only be authorized if the work is light work, that shall not be harmful to their health, moral or physical development and will not prevent them from attending school, or participate in guidance programmes or vocational training, nor weaken their capacity to benefit from education. The Committee noted the Government's statement that the Order requires redrafting, to identify the activities that constitute light work, as well as to prescribe the number of hours during which, and the conditions in which, the employment of children between the ages of 13 and 15 is allowed. In this regard, the Committee noted the Government's indication that it would take the Committee's comments and Paragraph 13(1)(b) of the Minimum Age Recommendation, 1973 (No. 146), into consideration in identifying what is light work, in conformity with *Article 7(3)* of the Convention. ***The Committee again expresses the hope that the Government will soon adopt regulations determining light work activities in accordance with the Convention and requests the Government to provide information on the developments in this regard in its next report.***

*Article 9(1). Penalties.* In its previous comments, the Committee noted the Government's information that the regulations on penalties for persons who violate the provisions of the Labour Code were promulgated and that sections 28–41 thereof specify the penalties to which employers are liable upon violation of the provisions relating to

child labour. *The Committee again requests the Government to provide a copy of the abovementioned regulations concerning violations of the Labour Code. The Committee also once again requests the Government to provide information on the enforcement of the penalties for the violation of these provisions in practice.*

*Article 9(3). Registers of employment.* In its earlier comments, the Committee noted that section 139 of the regulations putting into effect the Child Rights Act No. 45 of 2002 (Child Rights Act) states that an employer shall prepare a register which indicates the name of a working child, the child's guardian, the date on which he/she started work, place of residence and any other data required by the Ministry. Nonetheless, the Committee noted that these provisions did not specify that the employer must indicate the age or date of birth of the workers employed under the age of 18. The Committee recalled 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 again requests the Government to ensure that the registers kept pursuant to section 139 of the regulations putting into effect the Child Rights Act contain the ages or birth dates of persons who are less than 18 years of age, in conformity with Article 9(3) of the Convention. The Committee also requests the Government to supply a copy of the regulations putting into effect the Child Rights Act No. 45 of 2002.*

*The Committee encourages the Government to take into consideration, during its review of the Labour Code, the Committee's comments on discrepancies between national legislation and the Convention. In this regard, the Committee invites it to consider technical assistance from the ILO to bring its legislation into conformity with the Convention.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 5** (Saint Lucia); **Convention No. 6** (Burkina Faso, Myanmar); **Convention No. 59** (Lebanon, New Zealand, Paraguay, United Republic of Tanzania, Yemen); **Convention No. 77** (Algeria, Bulgaria, Comoros, Dominican Republic, Kyrgyzstan, Lebanon, Nicaragua, Peru, Spain, Tajikistan, Turkey, Ukraine); **Convention No. 78** (Algeria, Kyrgyzstan, Lebanon, Peru, Spain, Tajikistan, Ukraine); **Convention No. 79** (Kyrgyzstan, Russian Federation, Tajikistan); **Convention No. 90** (Croatia, Guinea, Lebanon, Netherlands, Paraguay, Saudi Arabia, Serbia, Swaziland, Tajikistan); **Convention No. 123** (Ecuador, Mongolia, Rwanda, Turkey, Uganda); **Convention No. 124** (Kyrgyzstan, Uganda, Ukraine, United Kingdom, Viet Nam); **Convention No. 138** (Burkina Faso, Burundi, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Gabon, Gambia, Georgia, Germany, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Indonesia, Iraq, Ireland, Israel, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Mauritania, Republic of Moldova, Montenegro, Mozambique, Namibia, Nepal, Netherlands, Nigeria, Rwanda, Samoa, Sao Tome and Principe, Seychelles, Thailand, Trinidad and Tobago, Tunisia); **Convention No. 182** (Bahamas, Burkina Faso, Chad, Comoros, Congo, Djibouti, Equatorial Guinea, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mexico, Republic of Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Russian Federation, Rwanda, Samoa, Sao Tome and Principe, Senegal, Seychelles, Slovakia, Slovenia, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Kingdom: St Helena, United States, Uzbekistan, Yemen).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 5** (Denmark: Greenland, United Kingdom: Guernsey); **Convention No. 6** (Latvia, Madagascar, Viet Nam); **Convention No. 10** (Senegal); **Convention No. 59** (Peru, United Kingdom: Gibraltar); **Convention No. 77** (Hungary, Slovakia); **Convention No. 78** (Bulgaria, Hungary, Slovakia); **Convention No. 79** (Ukraine); **Convention No. 123** (Swaziland); **Convention No. 124** (Slovakia); **Convention No. 138** (Hungary, Iceland, Republic of Korea, Latvia, Lithuania); **Convention No. 182** (Republic of Korea).

## Equality of opportunity and treatment

### Afghanistan

#### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)**

The Committee notes the Government's indication that a tripartite consultative group met to discuss labour law reform, with a view to making working conditions better for all, including women, and that draft Regulations have been finalized and sent to the Ministry of Justice. The Committee notes, however, that the report provides no information regarding whether the tripartite consultative group addressed specifically the issue of equal remuneration for men and women for work of equal value. **The Committee therefore asks the Government, once again, to provide information on the activities and recommendations of the tripartite consultative group with respect to the principle of equal remuneration for men and women for work of equal value and on reducing the wage gap.**

The Committee notes, however, that the Government's report is substantially the same as its previous report, and has not replied to the following points in its previous observation:

*Equal remuneration for work of equal value. Legislation.* The Committee notes the Government's indication that Afghanistan's Decent Work Country Programme covers the principle of equal remuneration for work of equal value. However, the Government does not give any specific information on measures taken or envisaged to include provisions in the Labour Law which would reflect the concept of equal remuneration for "work of equal value". The Committee recalls the importance of providing for the right of men and women to receive equal remuneration for "work of equal value" in order to allow a broad comparison between jobs performed by men and women that may be different but nonetheless of equal value, and that legislative provisions that do not give expression to the concept of "work of equal value" hinder progress in eradicating gender-based pay discrimination. The Committee also recalls that the definition of remuneration should include not only the ordinary, basic or minimum wage or salary but also any additional emoluments whatsoever, payable in cash or in kind, as stipulated in *Article 1(a) of the Convention*. **The Committee therefore asks the Government to take steps to adopt specific legislative provisions explicitly providing for equal remuneration between men and women for work of equal value and to provide information on the progress made in this regard.**

*Public service.* The Committee notes the Government's indication that a salary scale has been established in Annex I of the Civil Servants Law, taking into consideration the social situation as well as the national economic development, and the financial situation of the Government. The Committee draws the Government's attention to the fact that the method used to set salary scales must be free from gender bias and that it is important to ensure that there is no direct or indirect discrimination in the selection of factors for comparison, the weighing of such factors and the actual comparison carried out. **In order to better assess the method used to establish the salary scales in the public service, the Committee asks the Government to provide detailed information concerning the method and factors used to determine salary scales for public service employees, and to forward the latest version of the Civil Servants Act as well as its annexes.**

*Raising awareness of the principle of the Convention.* The Committee welcomes the Government's efforts to continue raising awareness of the principle of the Convention through various measures including organizing training programmes for government officials, workers, employers, judges and civil society, disseminating material on equal remuneration for women and men and organizing workshops for the gender units of ministries on women workers' rights under the Labour Law. **The Committee asks the Government to continue providing information on awareness raising activities carried out to promote the principle of the Convention, including information on the impact of such activities on reducing the gender pay gap. Please also provide information on the content of the training offered to government officials, workers, employers, judges and civil society.**

*Statistics.* **The Committee asks the Government to provide statistics on the earnings of men and women by sector and occupation, and any statistics or analysis on the gender pay gap.**

**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: 1969)**

*Articles 1 and 2 of the Convention. Legislation.* In its previous comments, recalling that the prohibition of discrimination in section 9 of the Labour Law is very general, the Committee urged the Government to take the opportunity of the labour law reform process, including in the context of the Decent Work Country Programme, to amend the law to prohibit direct and indirect discrimination covering 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 determined in consultation with employers' and workers' organizations, in accordance with *Article 1(1)(b)* of the Convention. The Committee recalls that the pillar on economic and social development of the National Action Plan for Women of Afghanistan (NAPWA) 2007–17 contains the strategy to improve women's economic status, and the strategy to increase the quality of education for women; in this context, the NAPWA also aims at reviewing the labour law to meet international standards. The Committee also recalls that the ILO project "Strengthening Labour Law Governance in Afghanistan" is under way. **The Committee asks the Government to ensure that in the process of labour law reform, direct and indirect discrimination is expressly defined and prohibited, covering all the grounds listed in Article 1(1)(a) of the Convention, as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with Article 1(1)(b) of the Convention, covering all aspects of employment and occupation. Please provide information on concrete steps taken in this regard, and specific information on the role of the social partners in the labour law reform process.**

*Civil service.* The Committee recalls section 10(2) of the Civil Servants Law of 2008, prohibiting discrimination in recruitment based on the grounds of sex, ethnicity, religion, disability and physical deformity. The Committee recalls that, where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention (General Survey on fundamental Conventions, 2012, paragraph 853). It also recalls that, under *Article 1(3)* of the Convention, “employment” and “occupation” also include access to vocational training and terms and conditions of employment. ***The Committee asks the Government to indicate any measures taken or envisaged to provide protection against discrimination for civil servants based on at least all the grounds enumerated in the Convention and in all aspects of employment and occupation. Recalling section 5 of the Labour Law providing for the scope of application, and noting that the Government’s report does not contain information in this regard, the Committee again asks the Government to clarify whether the provisions of the Labour Law are applicable to civil servants covered under the Civil Servants Law and, if so, to specify the interrelationship between section 9 of the Labour Law and section 10(2) of the Civil Servants Law.***

*Article 5(1). Special measures of protection. Work prohibited for women.* The Committee recalls the Government’s previous indication that the list of physically arduous or harmful work prohibited for women to be established under section 120 of the Labour Law was still under preparation. The Committee recalls that protective measures applicable to women’s employment, which are based on stereotypes regarding women’s professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation. Provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (General Survey, 2012, paragraph 840). ***The Committee again urges the Government to ensure that, in the process of the labour law reform, any restrictions on the work that can be done by women are strictly limited to maternity protection.***

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

## Albania

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)***

*Article 1 of the Convention. Discrimination on the basis of political opinion.* The Committee previously expressed concern regarding the potentially discriminatory effect of a “lustration” law, (screening act), Law No. 8043 of 30 November 1995, which may have amounted to discrimination based on political opinion, but most of the provisions of which expired on 31 December 2001. The Committee notes the adoption of a new “lustration” law, Law No. 10034, which entered into force on 30 January 2009, and provides for the exclusion of persons who had certain duties under the previous regime from serving in a broad range of public functions. On 16 February 2009, the Constitutional Court of Albania suspended the application of the Law pending a decision of its constitutionality. On 20 February 2009, the Court asked the Venice Commission of the Council of Europe to give an *amicus curiae* opinion on the Law. The Venice Commission found that there were several aspects of the Law that could interfere disproportionately with the right to stand for election, the right to work and the right to access to the public administration (Opinion No. 524/2009, paragraph 161). The Venice Commission also noted the fact that the objective and personal scope of application of this Law was very broad and imprecise, while it left little or no room for consideration of each case individually (paragraph 152). ***The Committee asks the Government to indicate the current status of Law No. 10034 of 2009, and to indicate how it is ensured that there is protection against discrimination in employment and occupation based on political opinion. The Committee also asks the Government to provide information on the practical application of this Law, if it is currently in force, including the following:***

- (i) ***the extent to which individual consideration is given in the process of verifying incompatibility of functions when a candidate assumed duties listed under section 4 of the Law;***
- (ii) ***the number of persons who have been dismissed, or excluded from being a candidate for, or employed in, the posts and professions listed under section 3 of the Law; and***
- (iii) ***any judicial decisions given concerning the application of the Law, including by the Constitutional Court.***

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

## Algeria

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)***

*Gender pay gap. Private sector.* The Committee notes the information provided by the Government on average wages for 2009 (by sex and age category) established on the basis of a survey of the annual wage declarations submitted to the National Social Security Fund, covering all skill levels and sectors. These partial data show that, depending on the age category, the average pay gap between men and women is between 3.3 per cent (46–50 years) and 52.8 per cent (60 years) to the detriment of women and that for all age categories taken together, the average wage gap between men

and women is around 15 per cent. *Recalling that it is particularly important to have available full and reliable statistical data on the remuneration of men and women as a basis for drawing up, implementing and then evaluating the measures taken to eliminate pay gaps, the Committee asks the Government to intensify its efforts to gather and analyse such data in the various economic sectors, including the public sector, and for the different occupational categories, and to provide such data with its next report. The Committee also asks the Government to take the necessary measures to eradicate pay gaps between men and women, including through awareness-raising measures on the principle of equal remuneration for men and women for work of equal value among employers, workers and their organizations and to provide information on any action taken in this respect and on any obstacles encountered.*

*Public service.* The Committee notes the Government's view, in reply to its previous comment, that it is not necessary to include in the general public service regulations (Ordinance No. 06-03 of 15 July 2006) a provision requiring equal remuneration for men and women for work of equal value since all the laws and regulations governing the personnel of public institutions and administrations apply to all public employees irrespective of sex. The Committee wishes to draw the Government's attention to the fact that the adoption and application of wage scales without sex distinction in the public service is not sufficient to exclude any gender discrimination in relation to remuneration. Indeed, such discrimination may have its roots in the criteria used for the classification of jobs, under-evaluation of the work performed mainly by women, or inequalities resulting from the provision of certain accessory benefits (bonuses, indemnities, allowances, etc.) to which men and women do not have access on an equal footing by law or in practice. *In the light of the above, the Committee once again asks the Government to indicate the manner in which it ensures the application of the principle of equal remuneration (basic wages and additional emoluments) between men and women for work of equal value, with an indication of whether objective job evaluations have already been undertaken or are envisaged in the public service.*

*Objective job evaluation. Collective agreements.* In its previous observation, the Committee noted that the framework collective agreement for the private sector 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 on the basis of job descriptions and the analysis, evaluation and rating of their content, leading to their classification according to the results of the evaluation. It also noted that the collective agreement sets out evaluation criteria (qualifications, responsibility, physical or intellectual effort, working conditions, and any particular constraints or requirements), but that it does not specifically envisage the application of the principle of equal remuneration for men and women for work of equal value. The Committee notes that the Government confines itself in its report to referring once again to the framework collective agreement, without providing the information requested on its application in practice, particularly with regard to job evaluation and classification. *The Committee therefore asks the Government to indicate how jobs in the private sector are classified in practice, in accordance with the framework collective agreement, and to indicate whether such classification has recently been reviewed in the various occupational branches. The Committee also asks the Government to provide information on the clauses in recently concluded branch collective agreements reflecting the principle of equal remuneration for men and women for work of equal value and providing for the evaluation of jobs on the basis of the work to be performed, and on the implementation of these clauses.*

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)***

*Legislation. Grounds of discrimination.* In its previous comments, the Committee emphasized that 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 and that the general conditions of service of the public service prohibit any discrimination among public employees on the grounds of their opinions, sex, origin and any other personal or social condition. The Committee recalls that where effect is given to the Convention by the national legislation, it has to cover at least all the grounds enumerated in *Article 1(1)(a) of the Convention*. *Noting that the draft Labour Code is still being prepared, the Committee once again urges the Government to take this opportunity to ensure that the provisions of the new Labour Code respecting prohibited grounds of discrimination also include race, colour, religion and national extraction and that they cover all stages of employment and occupation. The Committee requests the Government to provide information on the progress achieved in the revision of the labour legislation and on any measures adopted or envisaged for the amendment of the general conditions of service of the public service to ensure that the prohibition of discrimination explicitly covers as a minimum all the grounds enumerated in the Convention.*

*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 notes the Government's indications that the draft Labour Code will contain provisions defining sexual harassment and measures to prevent and combat it. *Drawing the Government's attention once again to its 2002 general observation, the Committee hopes that the new Labour Code will ensure complete protection against sexual harassment by prohibiting those quid pro quo sexual harassment and harassment due to a hostile working environment, and it requests the Government to provide information on this subject. The Committee once again requests the Government to provide information on the*

**measures taken in practice to prevent and combat sexual harassment in employment and occupation, including information on any education and awareness-raising campaigns and on the organization of activities in collaboration with employers' and workers' organizations.**

*Articles 2 and 3. National policy. Discrimination based on sex and the promotion of equality between men and women.* The Committee recalls that for several years it has been expressing deep concern at the low participation rate of women in employment and at the persistence of strongly stereotyped attitudes with respect to the roles and responsibilities of women and men in society and in the family, and has been emphasizing the negative impact of these attitudes on the access of women to employment and training. The Committee notes that, according to the information provided by the Government on the application of the Equal Remuneration Convention, 1951 (No. 100), that women represented 15.1 per cent of the employed population in the fourth quarter of 2010 (16.09 per cent in 2006). It further notes the Government's reference in its report on the application of the Convention to article 31bis of the Constitution, adopted in the context of the constitutional reform in 2008, under the terms of which "the State shall take measures to promote the political rights of women by increasing their opportunities of gaining access to representative functions in elected assemblies". While noting these constitutional provisions, the Committee recalls that the Convention requires the application of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, which includes the adoption and implementation of legislative and administrative measures, public policies, proactive measures to overcome inequalities in practice and of practical programmes and awareness-raising activities to combat stereotypes and prejudices with a view to eliminating discrimination in all aspects of employment and occupation. **Recalling that the participation of women in the labour market remains very low, the Committee urges the Government to take practical measures to promote and ensure equality of opportunity and treatment for women in all aspects of employment and occupation, including measures intended to combat sexist attitudes and prejudices, as well as proactive measures, particularly in relation to education and vocational training, with a view to overcoming inequalities in practice that affect women and to increasing their opportunities of gaining access to quality jobs. It requests the Government to provide information on any measures taken in this respect and up-to-date statistical data on the situation of men and women in employment in the public and private sectors, where possible by sector or occupational category.**

*Promoting equality and combating discrimination based on criteria other than sex set out in Article 1(1)(a).* For many years the Committee has been requesting the Government to provide information on the measures adopted to promote equality of opportunity and treatment in employment and occupation in law and practice without any distinction based on the criteria enumerated by the Convention other than sex. The Committee once again notes that the Government's report does not contain any information on this subject. **Recalling that Act No. 90-11 on labour relations does not prohibit discrimination based on race, colour, religion or national extraction, the Committee requests the Government to indicate the manner in which workers are protected against any discrimination based on these grounds in practice. It urges the Government to provide information on the measures adopted or envisaged to combat discrimination and promote equality in employment and occupation without distinction on the grounds of race, colour, national extraction, religion, political opinion or social origin, in collaboration with employers' and workers' organizations.**

*Article 5. Special protection measures.* For a number of years the Committee has been drawing the Government's attention to the importance of reviewing the provisions prohibiting night work for women, as well as those respecting the assignment of women to work that is hazardous, unhealthy or harmful to their health. It also recalled that, when reviewing these provisions, a distinction should be made between special measures to protect maternity, as envisaged in *Article 5*, and measures based on stereotyped perceptions of the capacity and role of women in society, which are contrary to the principle of equality of opportunity and treatment. The Committee notes the Government's indication that its comments will be taken into account when drawing up the new Labour Code. Recalling that the objective is to repeal discriminatory measures applicable to the employment of women, the Committee considers that it would undoubtedly be necessary to examine which other measures, such as to improve the health protection of all workers, safety and adequate transport, the availability of social services to improve the sharing of family responsibilities which would be necessary to enable women to benefit from the same opportunities of men in terms of access to employment. **The Committee requests the Government to ensure that, in the context of the review of the labour legislation, occupational safety and health provisions take into account the need to provide a safe and healthy environment for both men and women workers, while taking into account the differences which mean that they are exposed to specific risks in terms of health, and to ensure that they are not an obstacle to the access of women to employment and to the various occupations. It also requests the Government to ensure that the measures for the protection of women are limited to what is strictly necessary to protect maternity and requests it to provide information on any measures adopted to amend the legislation along these lines.**

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

## Angola

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1976)**

The Committee notes with *regret* that for a number of years, the Government's reports have failed to respond to the points raised in the Committee's comments. The Committee once again emphasizes that this prevents it from assessing the progress made with regard to the practical application of the Convention. ***The Committee urges the Government to take all necessary steps to ensure that its next report contains information in reply to all the issues raised by the Committee.***

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: 1976)**

The Committee notes with *regret* that the Government's report is identical to that of last year and does not reply to the issues raised. It must therefore repeat its previous observation which read as follows:

The Committee recalls that in previous observations it referred to the comments submitted by the National Union of Angolan Workers (UNTA) related to cases of age discrimination. The Committee notes that the Government indicates in this respect that the maximum age for eligibility to work in the public service is 35 years and that enterprises shall submit requests to employment centres for the workers they need. With respect to the maximum age requirement of 35 years, the Committee considers that such a requirement is likely to be indirectly discriminatory against women as it may particularly affect women wishing to enter or re-enter the labour market following an absence for maternity and child rearing. ***In this respect, the Committee encourages the Government, in collaboration with workers' and employers' organizations, to take measures to ensure that women are not indirectly discriminated against in access to employment due to the maximum age requirement. The Committee requests the Government to provide information on the measures taken in this regard.***

The Committee notes the Government's indication that some resolutions were adopted in order to ensure women's participation in the management of private and public entities and that a Gender Project is being implemented with the assistance of the ILO. The Government further indicates that in 2009 there were 319,003 employees in the public sector, of which 107,164 were women, and that there are no statistics concerning the informal economy. ***The Committee requests the Government to continue to supply statistical information and hopes that the Government will take the necessary measures to improve the collection of such data so as to include information on the representation of men and women in the different industries and occupations, as well as indications as to the representation of women in decision-making positions and the share of men and women considered to work in the informal economy.***

The Committee further notes that the Government's report contains no reply to certain points raised in its previous comments. The Committee is therefore bound to repeat its previous observation, which read in relevant parts, as follows:

***Discrimination in practice.*** The Committee notes that, although the Government has put in place legal provisions concerning discrimination in employment and occupation, including sections 3 and 268 of the General Labour Act No. 2/00, discrimination continues to occur in practice. In its report the Government states that violations of the non-discrimination provisions occur particularly in the private sector where imbalances in the participation in decision-making positions and a tendency to exclude women during and after maternity can be observed. The Government previously reported that gender-based discrimination also exists in the informal economy. As noted by the Committee previously, there is also a significant gender imbalance in the judiciary and as regards management positions in the civil service.

In its report, the Government states that it was difficult to measure the incidence of gender-based discrimination as women do not file petitions or complaints due to shortcomings in the "legal culture". The Government also states that it has made efforts to raise awareness of legal matters, particularly among women, by expanding information and education programmes on women's rights, using different national languages and various forms of communication. Efforts were also being made to address discriminatory cultural and traditional practices still prevailing in the country, which, for instance, lead to unequal access of girls to education. The Government, in a very general manner, also refers to the National Strategy and Strategic Framework to Promote Gender Equality and the Rural Growth and Development Programme which includes a programme for the economic empowerment of women. The report refers to the preparation and use of gender-disaggregated data, although such data has not been provided.

- ...
- (ii) ***The Committee encourages the Government to continue and intensify its efforts to raise awareness and understanding of the principle of non-discrimination and the related legislation among men and women, and requests the Government to indicate the specific activities carried out to this end. Given the reports of discrimination based on sex and pregnancy in the private sector, the Committee requests the Government to indicate the measures taken or envisaged to enhance the capacity of the labour inspectorate and other competent authorities to identify and address discrimination in employment and occupation. Please also provide information regarding whether the competent authorities have addressed any such cases, and if so, the results thereof.***
  - (iii) ***The Committee considers that the Government should take specific and proactive measures to promote and ensure equality of opportunity and treatment of women in the civil service, including the judiciary, and it asks the Government to indicate any measures taken or envisaged in this regard, including measures to ensure that women have access to management positions on an equal footing with men.***
- ...

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.***

## Antigua and Barbuda

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** **(ratification: 1983)**

*National extraction and social origin.* The Committee recalls that section C4(1) of the Labour Code does not prohibit discrimination on the basis of national extraction or social origin. It also recalls that where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a) of the Convention*, namely race, colour, sex, religion, political opinion, national extraction and social origin (General Survey on fundamental Conventions, 2012, paragraph 853). The Committee notes the Government's statement that when the new Labour Code is published, national extraction and social origin will be included to give effect to the Convention. However, no indication is given as to when the drafting of a new Labour Code would be undertaken. ***The Committee asks the Government to provide information on the concrete steps taken to draft and adopt a new Labour Code, and urges the Government to ensure that in this process specific provisions are included defining and prohibiting direct and indirect discrimination, in all aspects of employment and occupation, covering at least all the grounds of discrimination enumerated in the Convention, namely race, sex, colour, religion, political opinion, national extraction and social origin.***

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

## Argentina

### ***Equal Remuneration Convention, 1951 (No. 100)*** (ratification: 1956)

The Committee notes the observations from the Confederation of Workers of Argentina (CTA), received on 31 August 2012, reporting significant occupational segregation, both vertical and horizontal, reflected in a sizable pay gap (25 per cent in 2010), a lack of up-to-date statistics regarding women and men in the labour market and the inefficiency of the measures adopted so far by the Tripartite Committee on Equality of Treatment and Opportunity (CTIO) and the Coordinating Unit for Gender Equity and Equal Opportunities (CEGIOT). The Committee also notes the CTA's observations of 7 September 2012 and the comments of the General Confederation of Labour (CGT) received on 21 September 2012. ***The Committee asks the Government to send its observations on these comments.***

*Gender pay gap.* The Committee also notes the Government's communication of 31 May 2012 replying to the CGT's observations of 31 August 2011 reporting the persistence of high rates of inequality between men and women, apparent in the disparities in the quality of the jobs undertaken by men and women, respectively, and particularly in levels of responsibility, which all affect levels of remuneration. According to the CGT, informal work also contributes to these disparities, particularly in domestic work and the agricultural sector. The Committee notes that the Government refers in this connection to Act No. 26485 on media violence against women and Act No. 26522 on audiovisual media, which prohibit the use of stereotyped images of women, promote the reinforcement of women's education and of training for women in use of the media. The Government also refers to other initiatives such as non-sexist writing competitions for children, television programmes advocating women's rights, the monitoring of women's integration in the armed forces and the "State consensus against gender discrimination and towards real equality between women and men". Regarding informal work, the Government indicates that a significant increase has been achieved in the number of registered workers due to simplified procedures for regularizing workers. The Committee also notes the awareness-raising and training activities that the CEGIOT conducted for workers' and employers' organizations, which included handbooks on negotiation with a gender perspective and workshops on gender equality. It notes that these activities were carried out in 2010. While noting the measures taken by the Government to secure gender equality and eradicate stereotyped images of women, the Committee notes that there is no mention of specific measures taken to reduce or eliminate the gender pay gap. The Committee recalls that the continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations, take more proactive measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value. Collecting, analysing and disseminating this information is important in identifying and addressing inequality in remuneration (see General Survey on the fundamental Conventions, 2012, paragraph 669). ***The Committee asks the Government to provide statistical information on the participation of men and women in the labour market, including information on remuneration levels, and disaggregated by occupation and economic sectors. It also asks the Government to indicate the specific measures taken to address the gender pay gap and the measures to address occupational segregation in the labour market as a factor contributing to pay differentials. Please indicate the measures taken or envisaged to promote objective job evaluation with a view to ensuring the right of equal remuneration for men and women for work of equal value, established in the Convention. The Committee also asks the Government to send up-to-date information on the measures taken since 2010 to promote the incorporation in collective agreements of the principle of equal remuneration for work of equal value, and on the effects these measures have had on collective agreements concluded.***

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



## ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1968)***

The Committee notes the Government's communications of 13 March and 11 and 25 June 2012 replying to comments made on 31 August 2011 by the Confederation of Workers of Argentina (CTA) and the General Confederation of Labour (CGT), which the Committee noted in its previous observation. ***The Committee further notes the CTA's comments received on 31 August and 7 September 2012 and those of the CGT received on 21 September 2012, and asks the Government to send its observations thereon.***

***Equality between men and women.*** The Committee notes that in its observations, the CTA refers to delay in the adoption of specific legislation to address discrimination in access to employment. The Committee notes that, according to the Government, the National Institute Against Discrimination, Xenophobia and Racism (INADI) is implementing the programme "State consensus against gender discrimination" in various provinces and municipalities, and as part of the programme participatory assemblies are held and a pilot action plan is to be developed for the coordination of local policies in order to eliminate discrimination against women in a number of fields, including at work, in four provinces. The Government also refers to activities conducted by the Tripartite Committee on Equality of Opportunities and Treatment (CTIO) and the Coordinator of Gender Equity and Equal Opportunities at Work (CEGIOT), whose activities include training for women in non-traditional jobs within the framework of the "Programme on New Skills for Women", promoting the participation of women in negotiating bodies and the balancing of family responsibilities and work. The CTIO also participates in the Internal Commission of the Minister of Labour and Social Security to discuss the labour contracts law and the amendments concerning the issue of reconciling work and family responsibilities. The Government also states that a CTIO scheme is to be established in provinces and municipalities. The Government attaches an INADI report giving an account of the activities and programmes under way, such as the Programme for Parity at Work, the Enterprise Network Programme and the Programme on Good Practices in Public Employment. ***Pointing out that access to information on the practical effects of the measures taken by the Government at national, provincial and municipal level is important because such data allow an evaluation of the extent to which the measures contribute to equality between men and women in access to work and career development, the Committee requests the Government to send statistical information on the participation of men and of women in the labour market by sector of activity and level of remuneration. It also asks the Government to continue to provide information on the Ministry of Labour and Social Security's Coordinator of Gender Equity and Equal Opportunities at Work (CEGIOT), the Committee for Work with Equal Opportunities (CTIO) and the National Institute against Discrimination, Xenophobia and Racism (INADI), and in particular the programme "State consensus against gender discrimination".***

***National equality policy.*** The Committee recalls that in its comments, the CGT referred to the lack of any national policy on equality of opportunity and treatment in employment with respect to grounds other than sex. The Committee notes that according to the comments submitted by the CTA, the activities carried out by INADI and the CTIO are not sufficient to secure the mainstreaming of gender equality issues in public policies. The CTA adds that it is important to set up mechanisms to ensure full compliance with standards. The Committee notes that in its report, INADI refers to complaints received for discrimination in employment on various grounds, including social status, disability, HIV status, religion and political opinion. The Committee notes the confirmation of a working group within the Directorate for the Promotion and Development of Non-discriminatory Practices to promote the rights of the groups that have been, historically, most vulnerable. ***The Committee requests the Government to report on INADI's treatment of the complaints of discrimination in employment. It also asks the Government to indicate whether there is a national equality policy that covers all the grounds of discrimination set out at Article 1(1)(a) of the Convention, and to send information on any other measures adopted to address discrimination on these grounds.***

***Domestic workers.*** The Committee notes that in its observations, the CTA reiterates that most domestic workers are not registered and under the legislation in force have less protection than other workers in terms of hours of work, leave, holidays, etc. The Committee also notes that there is a Bill on workers in private houses. It notes that according to the Government, the Bill is currently under examination by the Senate. A draft law regarding the ratification of the Domestic Workers Convention, 2011 (No. 189), has also been presented in Congress. The Government also refers to Resolution No. 876/2006, the aim of which is to improve the employability of domestic workers by promoting professionalization of their job and providing them with skills to improve their access to the labour market. With this in mind, agreements are being concluded with educational institutions that provide training for domestic workers. In the period 2007–10, training was provided for 7,150 persons. The CTIO has carried out a study on domestic work with the aim of analysing problems faced by the sector and improving the conditions of the workers. The Committee recalls its previous comments noting that the majority of the domestic workers, both national and foreign, are women. ***The Committee requests the Government to continue to report on the passage through Parliament of the Bill on workers in private houses drafted by the Ministry of Labour and Social Security, and on the implementation of Resolution No. 876/2006 and on any other measures that seek to protect domestic workers and improve their training so as to increase and diversify their job opportunities.***

***Workers with disabilities.*** The Committee notes that according to the Government, Act No. 25689 of 2003 provides for a number of possible mechanisms to ensure the inclusion of persons with disabilities in the public sector. Furthermore, section 8 of Act No. 22431 to amend Act No. 25689, establishes an obligation to incorporate persons with disabilities in

the three powers of the State and in decentralized public bodies in a proportion of not less than 4 per cent. Under Decree No. 312 of 2 March 2010, various measures were taken in order to register the positions covered by persons with disabilities. The decree also lays down an obligation to set up a register of applicants' profiles and provides for monitoring in institutions in order to guard against discrimination in public bodies. Furthermore, posts are to be set aside for occupation solely by persons with disabilities. ***The Committee requests the Government to send information on the number of persons with disabilities actually employed in the public sector, specifying the bodies in which they work. Please also provide information on the measures taken to promote the employment of persons with disabilities in the private sector together with statistical information on the number of such persons actually employed in this sector.***

*Unregistered workers.* The Committee notes that according to the CTA, there is no real monitoring of the situation of unregistered workers as a group that is more vulnerable, inter alia in terms of social protection and equal remuneration. The Committee points out that in its previous comments it asked the Government to provide information on the effects of Act No. 26476 of 2008 and the Employment Regularization Plan and similar measures adopted by the Government to promote the regularization of unregistered workers with a view to reducing their vulnerability and improving their conditions of work. The Committee notes the information from the Government to the effect that the ratio of unregistered workers was 49.9 per cent in 2003 and fell to 36 per cent in 2010. Unregistered work among women posted a drop of 18 per cent. The Government further provides information on the launching of "Digital Work Registration" which should allow a better control of unregistered workers. ***The Committee requests the Government to continue to provide information on the measures taken to regularize unregistered workers and on the impact of these measures on their working conditions.***

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

## Armenia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)***

*Article 1 of the Convention. Legislation. Equal remuneration for work of equal value.* The Committee recalls that in its previous comments it pointed out that different terms, such as "wage", "remuneration", "pay" and "salary" were used throughout section 178 of the Labour Code concerning wages. The Committee notes that section 178(3) provides that "wage" shall comprise the basic salary and all additional payments paid by the employer to the employee in any way for the work performed", and that it appears to be in line with the definition of "remuneration" provided in *Article 1(a)* of the Convention. The Committee understands from the Government's indication that "additional payments", such as bonuses and incentives, are paid for work in particular working conditions or depend on the professional qualifications of the worker. The Committee recalls however that section 178(2) of the Labour Code, which provides for "equal pay for the same or equivalent work" between men and women, does not reflect fully the principle of equal remuneration for men and women for work of equal value. It recalls that, due to stereotypical attitudes regarding women's aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women and others by men. The concept of "work of equal value" is fundamental to tackling this occupational sex segregation in the labour market because it permits a broad scope of comparison, going beyond the "same" or "equivalent" work, and also encompassing jobs that are of an entirely different nature, but which are nevertheless of equal value (see General Survey on the fundamental Conventions, 2012, paragraphs 672–675). ***The Committee asks the Government to confirm that section 178(2) of the Labour Code which provides for "equal pay for the same or equivalent work" applies to both basic salary and additional payments, as defined by section 178(3). Moreover, noting that section 178(2) of the Labour Code contains provisions that are narrower than the principle laid down by the Convention, the Committee asks the Government to take steps to amend this section in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, so as to address situations where men and women perform different work that is nevertheless of equal value. The Committee asks the Government to provide information on the steps taken in this regard.***

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

## Austria

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)***

The Committee notes the observations of the Federal Chamber of Labour, which were attached to the Government's report.

*The gender wage gap.* Further to its previous observation in which it noted with concern the wide gender wage gap (25.5 per cent in 2007), the Committee notes that, according to Eurostat data, the unadjusted gender wage gap remained at 25.5 per cent in 2010. Recalling that, in its previous report, the Government had indicated a range of causes of this large gender wage gap, the Committee notes with *interest* the adoption, in June 2010, of the "Gender Equality in the Labour Market" National Action Plan which addresses a number of these issues. Under the National Action Plan, an array of targeted measures will be progressively implemented, including, inter alia, further training programmes for educationally underprivileged women, career counselling and coaching for part-timers, women workers in low-paid sectors and women reintegrating into the labour market after a long career break, and an action programme to provide high-quality childcare

support. *The Committee asks the Government to provide information on the status of implementation of the National Action Plan and on the impact of such measures in narrowing the gender wage gap.*

*Wage transparency.* The Committee notes that two key measures aimed at enhancing pay transparency in undertakings, have been introduced pursuant to the amendments to the Equal Treatment Act of 15 February 2011. Section 9 of this Act provides that vacancy announcements must contain information on the minimum wage applicable to the job position advertised and on the employer's willingness to pay any additional emoluments, under penalty for non-compliance of a fine of up to €360. Under section 11 of the Act, companies with more than 1,000 employees must prepare and submit to their work councils or, in their absence, to their employees, a biennial wage report providing anonymous data on the average annual income of their women and men workers. The Committee also notes that companies employing 150 workers or more will be included in this measure gradually up until 2014 and that public services are subject to the same reporting obligation. The Committee further notes the Government's indication that pursuant to an amendment to the Vienna Equal Treatment Act (*Provincial Law Gazette for Vienna No. 16/2012*), the executive municipal councillor for staff members shall present an annual report analysing the income earned by the permanent employees of the municipality of Vienna. *Noting that the first wage reports were due on 31 July 2011, the Committee asks the Government to provide information on the implementation of the amendments to the Equal Treatment Act, including statistical data on the level of compliance with this statutory requirement, information on sanctions imposed in case of non-compliance, and any actions taken to address gender wage gaps revealed, and the impact thereof. The Committee also asks the Government to provide statistical information on the number of undertakings of 150 employees or less in the country and, if available, on the employment rate in these undertakings disaggregated by sex and by size of undertaking.*

Furthermore, the Committee notes the "equal = fair" campaign launched by the Federal Minister of Labour, Social Affairs and Consumer Protection, with a view to raising awareness of the large gender income gap and to promoting wage transparency. It also notes that, with regard to the dissemination of information on sectoral and local wage levels applicable, a wage calculator was commissioned by the Government and has been available online since October 2011. *The Committee asks the Government to provide information on the implementation of these measures and on their impact on the reduction of the gender wage gap.*

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. Work of equal value.* The Committee recalls that the general provisions of sections 16, 154, and 158 of the Labour Code of 1999 do not address the principle of the Convention, and that section 9 of Act No. 150-IIIQ of 10 October 2006 on Gender Equality (Act on Gender Equality) does not fully reflect the principle of equal remuneration for men and women for work of equal value. Section 9 of the Act on Gender Equality is limited to equal wages for men and women who perform work under equal conditions, in the same enterprise and with the same skills. The Committee recalls that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for work of equal value, and the promotion of equality, and that it not only encompasses the same work performed under equal conditions and with the same skills, but also allows for a comparison between jobs that are of an entirely different nature, but which are nevertheless of equal value (see General Survey on fundamental Conventions, 2012, paragraphs 673 and 677). With respect to average wages, according to the statistics for 2011 provided by the Government, women were earning significantly less than men in many sectors of the economy: 38.4 per cent less in oil and gas production; 35.1 per cent less in health care and social services; and 30.8 per cent less in chemical industries. The Committee also recalls the existence of significant horizontal and vertical occupational gender segregation within the labour market, and refers to its comments under Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In this connection, the Committee recalls that as effective application of the principle is required, where women are more heavily concentrated in certain sectors or occupations, there is a risk that the possibilities for comparison at the enterprise or establishment level will be insufficient, (see General Survey, 2012, paragraph 698). *The Committee therefore urges the Government to take the necessary measures to give full legislative expression to the principle of equal remuneration for 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 to 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)**

*Legislative developments.* The Committee welcomes the Government's indication that the Labour Code has been amended and now provides, in addition to other grounds of discrimination, that "no person shall be refused admission to employment or promotion, or be dismissed on account of infection with the human immunodeficiency virus (HIV), with the exception of types of work and occupations in which it is prohibited to employ persons living with HIV" (section 16(1)). It also notes that following the adoption of Law No. 424-IIIQD of 1 October 2007, which provides that

“advertisement of the competition only for the representative of one gender is prohibited except for cases provided for in legislation”, section 50(2) of the Labour Code was amended on 17 May 2009 to include the same prohibition, according to the Government, both in line with section 10 of Act No. 150-IIIQ of 10 October 2006 on Gender Equality. The Committee further notes the Government’s indication that the Constitution was amended on 18 March 2009 to include a provision which provides that “a person shall not be subject to harm, nor granted or denied benefits or privileges” on specified grounds (section 25(4)), namely, race, ethnicity, religion, language, sex, origin, property, employment status, convictions and affiliation to political parties, trade unions and other voluntary associations. ***The Committee asks the Government to indicate the types of work and occupations which fall under the exception as “types of work and occupations in which it is prohibited to employ persons living with the HIV” under section 16(1) of the Labour Code. It also asks the Government to provide information on the practical application of sections 16(1) and 50(2) of the Labour Code, as well as section 25(4) of the Constitution. Please also provide copies of the amendments referred to in the Government’s report.***

***Exclusion of women from certain occupations.*** The Committee has raised concerns over a number of years regarding the exclusion of women from certain occupations pursuant to Decision No. 170 of 20 October 1999, made under section 241 of the Labour Code. It notes the Government’s indication that efforts are being made to repeal or abrogate the list under Decision No. 170 of 1999. The Committee again recalls that protective measures applicable to women’s employment which are based on stereotypes regarding women’s professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation. Provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (General Survey on fundamental Conventions, 2012, paragraph 840). ***The Committee urges the Government to repeal the list under Decision No. 170 of 1999 and to ensure that any measures limiting women’s employment are strictly limited to maternity protection. Please provide specific information on the progress made in this regard.***

***Gender equality in employment and occupation.*** The Committee recalls the adoption of the “State programme on implementation of the Employment Strategy for 2007–10” setting out the strategy to address issues regarding the employment of women and provide gender equality in employment. It notes that in accordance with the ILO Decent Work Country Programme (DWCP), which aims at including enhancing self-employment opportunities for women and involving them in entrepreneurship activities, the “Development of gender equality and women entrepreneurship” programme has been implemented. ***The Committee asks the Government to provide specific information on progress made regarding the following:***

- (i) the measures taken to promote gender equality under the Programme on implementation of the Employment Strategy for 2007–10 and their impact; and***
- (ii) the measures taken to promote gender equality within the framework of the DWCP, and its impact, including under the “Development of gender equality and women entrepreneurship” programme.***

The Committee also recalls the significant horizontal and vertical gender segregation in the labour market, and the Government’s explanation that management roles were not assumed by women due to their family responsibilities. It notes the statistical information provided by the Government on the situation of women in the labour market. In 2011, women were concentrated in sectors such as information and communications (women constituted 80.3 per cent); health and social services (72.7 per cent); and education (67.2 per cent). According to a report “Evaluation of the situation for development of woman entrepreneurship” published by the National Centre for Productivity and Competitiveness and the ILO in 2009, for example, in state institutions of higher education, men consisted of 89.2 per cent of faculty deans, 83.3 per cent of department directors, and 82.3 per cent of professors. This report recommended that the Government take measures for increasing the representation of women in public administration and decision-making, and to take concrete measures for the creation of specialized training programmes, information and training centres providing business education and professional training to women who want to start a business, especially in regions. The Committee notes the Government’s indication in this connection that in 2011, the State Employment Service enabled 4,299 persons, including 2,039 women, to undertake vocational training. ***The Committee asks 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 also asks 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.***

***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 employment and education. While noting the statistical information based on the 2009 census concerning the population and ethnic composition, the Committee notes the Government’s indication that its employment policy prohibits discrimination on the grounds of religion and ethnicity, therefore, there are no statistics on employment disaggregated by religion or ethnicity. The Committee recalls that a national policy to promote equality of opportunity and treatment, as envisaged in *Articles 2 and 3 of the Convention*,

should include measures to promote equality of opportunity and treatment of members of all ethnic groups with respect to access to vocational training and guidance, placement services, employment and particular occupations, and terms and conditions of employment (General Survey, 2012, paragraph 765). *The Committee asks the Government to provide detailed information on concrete measures taken or envisaged to promote equality of opportunity and treatment of members of different ethnic minorities in education, training and employment, including under the Employment Strategy (2006–15), as well as statistical information, disaggregated by sex, on the economic activities of the different ethnic groups.*

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

## Bahrain

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 2000)***

The Committee notes the complaint concerning the non-observance by Bahrain of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made by delegates to the 100th Session (June 2011) of the International Labour Conference under article 26 of the ILO Constitution. The status of the complaint remains under review by the ILO Governing Body; therefore, the issues raised therein regarding specific allegations of discrimination based on political opinion and religion will not be examined by this Committee at this time. The Committee also notes the reports received from the Government of 12 September 2011 and 30 August 2012.

*Legislative developments.* The Committee notes the adoption of the Labour Law in the Private Sector, Law No. 36 of 2012 (“Labour Law”), which entered into force on 2 September 2012. The Committee notes the Government’s indication that the new law includes modern principles, which take into account international labour standards, thus addressing several gaps in the previous law. The Committee notes that pursuant to section 39, “Discrimination in wages based on sex, origin, language, religion or ideology shall be prohibited”. Section 104 provides that the termination of an employment contract is deemed to be arbitrary dismissal if the termination is due to “sex, colour, religion, ideology, marital status, family responsibilities, or the female worker’s pregnancy, delivery of a child or breastfeeding; ... complaint or formal notice or instigates an action against the employer, unless the complaint, formal notice or action are of a vexatious nature”, and that reinstatement is to be ordered by the Court where dismissal was due to one of the enumerated grounds. In addition, section 29 provides that women shall be subject to all the provisions governing the employment of men “without discrimination in similar situations”, and section 33 prohibits employers from dismissing women on the grounds of marriage or during maternity leave.

The Committee recalls its previous comments urging the Government to take steps to ensure that the new Labour Law included provisions explicitly defining and prohibiting direct and indirect discrimination, on all the grounds enumerated in *Article 1(1)(a) of the Convention*, with respect to all aspects of employment and occupation, and covering all workers, including domestic workers, casual workers and agricultural workers. The Committee notes, however, that the Labour Law does not define discrimination and does not appear to prohibit indirect discrimination. The Committee also notes that, while discrimination in wages and discriminatory dismissals is prohibited, not all the grounds set out in *Article 1(1)(a) of the Convention* have been included. In particular, section 39 does not prohibit discrimination based on race, colour, political opinion, national extraction or social origin; and race, political opinion, national extraction and social origin are absent from the list of prohibited grounds in section 104. The Committee notes that protection against discrimination in “access to vocational training, access to employment and to particular occupations, and terms and conditions of employment”, as set out in *Article 1(3) of the Convention*, is not covered by the Labour Law, with the exception of wages and dismissal. The Committee also notes that pursuant to section 2, the Labour Law does not apply to civil servants and public legal entities or “domestic servants and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks” performing work for the employer or the employer’s family members, except for certain specified provisions, which do not include those relating to discrimination. The Committee recalls that legal provisions adopted to give effect to the Convention should include at least all the grounds of discrimination specified in *Article 1(1)(a) of the Convention*, and should apply to all aspects of employment and occupation (General Survey on the fundamental Conventions, 2012, paragraphs 749 and 856). The Committee further recalls that the purpose of the Convention is to protect all persons against discrimination, and no provision in the Convention limits its scope with respect to individuals or branches of activity (see General Survey, 2012, paragraph 733). *Noting the Government’s reference to the adoption of Legislative Decree No. 48 of 2010 regarding the civil service, the Committee asks the Government to provide a copy of the Decree and indicate the specific provisions of relevance to the implementation of the Convention. The Committee also asks the Government to provide detailed information on the steps taken to ensure that all workers, including those excluded from the scope of the non-discrimination provisions in the Labour Law, are protected against both direct and indirect discrimination, with respect to all aspects of employment and occupation, including access to employment, vocational training and terms and conditions of employment, based on all the grounds enumerated in the Convention. The Committee also asks the Government to consider further revising the Labour Law with a view to giving full legislative expression to the principle of the Convention, and to provide information on any steps taken in this regard.*

*Discrimination based on sex.* The Committee had been raising concerns regarding the provisions of the previous Labour Code which foresaw an Order being made prescribing the occupations and jobs that could be offered to women as alternative employment in the event of marriage. The Committee urged the Government to ensure that such a provision was not included in the new legislation and expressed the hope that any restrictions on women's employment would be strictly limited to maternity protection. The Committee notes, however, that while the new Labour Law does not replicate this provision, it provides for a potentially much broader prohibition on the employment of women, as section 31 provides that the Minister shall issue a decision determining the work in which the employment of women is prohibited. The Committee recalls that protective measures for women may be broadly categorized into those aimed at protecting maternity in the strict sense, which come within the scope of *Article 5* of the Convention. Those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society, which are contrary to the Convention and constitute obstacles to the recruitment and employment of women (see General Survey, 2012, paragraph 839). **The Committee urges the Government to take steps to ensure that protective measures applicable to women are limited to maternity protection in the strict sense, and that any provisions otherwise constituting an obstacle to the recruitment and employment of women are repealed and any such measures withdrawn. Please provide information of the specific measures taken or envisaged in this regard.**

*Sexual harassment.* The Committee notes that the opportunity was not taken in the course of the revision of the Labour Code to include a provision expressly defining and prohibiting sexual harassment in employment and occupation. The Committee notes that the Government again asserts that the provisions of the Penal Code are sufficient, and that in addition a complainant could submit a complaint of discrimination to the Ministry of Labour. The Committee recalls that the Penal Code addresses rape and other forms of sexual assault, but does not address the full range of behaviour that constitutes sexual harassment in employment and occupation. The Committee considers that addressing sexual harassment through criminal proceedings is not sufficient due to the sensitivity of the issue, the higher burden of proof, and the limited range of behaviour addressed. The Committee also considers that the non-discrimination provisions in the Labour Law are not sufficient, as they cover only wages and termination of employment and do not expressly define and prohibit all forms of sexual harassment. The Committee recalls that sexual harassment is a serious manifestation of sex discrimination and a violation of human rights, and requires effective measures to prevent and prohibit it, which should address both quid pro quo and hostile environment sexual harassment (General Survey, 2012, paragraph 789). **The Committee once again urges the Government to take steps to define and prohibit expressly sexual harassment in employment and occupation, encompassing both quid pro quo and hostile environment harassment. The Committee also asks the Government to take practical measures to prevent and address sexual harassment, and to provide detailed information in this regard.**

*Migrant workers.* The Committee notes, as indicated above, that the Labour Law excludes from coverage of the non-discrimination provisions groups that will be comprised largely of migrant workers, namely "domestic servants and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks". The Committee recalls that it has been raising concerns regarding the particular vulnerability of migrant workers to discrimination, in particular migrant domestic workers. The Committee also recalls the adoption of Order No. 79 of 16 April 2009, section 2 of which provides that "a foreign worker shall have the right to transfer to work with another employer without violating the rights of the employer by virtue of the provisions of the law or the text of the labour contract concluded between the parties". The request to change employers must be approved by the Labour Market Regulatory Authority (section 5). The Government indicates that between 1 August 2009 and 31 March 2011, out of 18,340 foreign workers who changed employer, only 215 did so without the employer's approval (1.17 per cent). The Government indicates that a tripartite committee has been discussing the impact of the Order on the labour market, and has decided that a company has the right to specify in the labour contract the prohibition of a worker's transfer to a competitive company for a defined period. The Government also indicates that an employer generally has the right to include in the employment contract a requirement limiting the approval of a transfer to another employer for a specified period. If the worker does not adhere to the terms of the contract, the employer can claim compensation from the court. The Committee considers that permitting an employer to stipulate limitations on the transfer to another employer in the employment contract could undermine the objective of Order No. 79 because, due to unequal bargaining power, migrant workers may be pressured to agree to such provisions, once again placing them in a position of increased dependency, and seriously affecting their enjoyment of labour rights and exposing them to discriminatory practices. **The Committee asks the Government:**

- (i) **to ensure effective protection of all migrant workers against discrimination on the grounds of race, sex, colour, religion, political opinion, national extraction and social origin, and to ensure that they have access to appropriate procedures and remedies, and to provide information on concrete steps taken in this regard;**
- (ii) **to ensure that any rules adopted to regulate the right of migrant workers to change employers do not impose conditions or limitations that could increase the dependency of migrant workers on their employers, and thus increase their vulnerability to abuse and discriminatory practices;**
- (iii) **to provide information on the number of migrant workers, disaggregated by sex, occupation and country of origin, that have changed employers pursuant to Order No. 79 (with employer's approval, without employer's approval, and after the end of the work permit);**

- (iv) *to provide information on the nature and number of requests received by the Labour Market Regulatory Authority for a transfer of employer without the employer's approval, disaggregated by sex, occupation and country of origin, and how many were refused and on what basis; and*
- (v) *to continue to provide information on the results of the examination by the committee to determine the impact of applying the Order and any follow-up thereto.*

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

## Bangladesh

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1998)**

The Committee notes the observations of the Bangladesh Employers' Federation (BEF) which are incorporated in the Government's report.

*Assessment of the gender pay gap.* The Committee recalls the 2008 ILO study "The gender wage gap in Bangladesh" and the findings of the 2007 wage survey carried out by the Bangladesh Bureau of Statistics, both of which show a wide and persistent gender pay gap. The Committee notes that the Government once again asserts that there is no gender pay gap in the formal sector, without providing any statistics or other information on the earnings of men and women in the public and private sectors. The Government does, however, acknowledge that pay gaps exist in the informal sector and in unorganized small enterprises, with nearly 80 per cent of the country's employment being in the informal economy, and informal employment having increased sharply for women. The Committee also notes the Government's indication that it faces difficulties in looking into the wage gap in small enterprises, which are spread over the countryside. The Bangladesh Employers' Federation states that it will be very difficult to minimize the wage gaps in the unorganized informal economy until the economic condition of the country improves. ***The Committee asks the Government to take steps to collect and analyse information, including statistical data disaggregated at least by sex, branch of activity, and occupation or occupational group, on the nature and extent of the gender pay gap in the formal and informal economies. Please also indicate the concrete steps taken to address and reduce the gender pay gap.***

*Articles 1 and 2 of the Convention.* The Committee recalls that section 345 of the Labour Act of 2006 provides that in determining wages or fixing minimum rates of wages the principle of equal wages for male and female workers for work of "equal nature or equal value" shall be followed. The Committee has been asking the Government for information on the measures taken to ensure the effective application of section 345, and notes in that context that the Government indicates generally that the principle is applied in the public and private sectors, and cites section 307 of the Labour Act, which provides penalties for violations of the provisions of the Labour Act. The Government also states generally that various ministries take measures to train inspectors, public officials, entrepreneurs, and middle managers of enterprises, and that seminars and workshops are organized for lawyers, judges and high-level officials. The Government also indicates that technical assistance could be useful to strengthen the capacity of responsible authorities in implementing the relevant provisions of the Act. ***The Committee asks the Government to provide specific information on measures taken with a view to the effective implementation of the principle of equal remuneration for men and women for work of equal value, including detailed information on the contents of the training and awareness-raising activities to which the Government refers, as well as on any relevant judicial or administrative decisions. The Committee also asks the Government to provide information on steps taken to secure ILO technical assistance, with a view to ensuring the effective implementation of section 345 of the Labour Act.***

*Article 1(a). Definition of remuneration.* The Committee recalls section 2(xlv) of the Labour Act, which excludes particular aspects of remuneration from the definition of "wages". The Committee notes the Government's indication that depending on the nature of jobs, employers provide, for example, accommodation, which is a facility attached to the job and cannot be included in the definition of wages. The Committee recalls that the Convention sets out a broad definition of remuneration, which includes not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever ... whether in cash or in kind" (*Article 1(a)*). The use of "any additional emoluments whatsoever" requires that all elements that a worker may receive for his or her work, including accommodation, are taken into account in the comparison of remuneration. Such additional components are often of considerable value and need to be included in the calculation. Otherwise much of what can be given a monetary value arising out of the job would not be captured (see General Survey on fundamental Conventions 2012, paragraphs 686–687, 690–691). ***The Committee asks the Government to take steps to broaden the scope of application of section 345 of the Labour Act to include all aspects of remuneration, and to provide specific information in this regard. In the meantime, the Committee again asks the Government to examine the extent to which the principle of equal remuneration for men and women for work of equal value is being applied in practice in relation to those aspects of remuneration which are excluded from the definition of "wages" under section 2(xlv) of the Labour Act, and to provide information on the steps taken in this regard.***

*Article 2(2)(b). Minimum wages.* The Committee previously noted that wages were very low in the ready-made garments industry (RMG), in which 90 per cent of employees are women. The Committee notes that, pursuant to the wage order of 31 October 2010, the minimum wage for the RMG sector has increased from 1,650 Bangladeshi taka (BDT) to BDT3,000. The Committee notes, however, that in defining different functions in the wage order, sex-specific terminology remains in use, such as "pressing men" or "pressing women". Such terminology should be avoided so as not

to reinforce stereotypical attitudes regarding whether certain jobs should be carried out by men or women. The Committee also notes the Government's indication that 45 sectors are now covered by the minimum wage scheme, including jute industries, tailoring, oil mills and vegetable products. *The Committee asks the Government to continue to provide information on the developments with respect to the coverage and rates of minimum wages. The Committee again asks the Government to indicate how in practice it is ensured that in determining minimum wage rates for sectors or occupations in which women are predominantly employed, the work being undertaken is not being undervalued, including whether any specific method is used to objectively determine the value of the various jobs. The Committee also asks the Government to take steps to ensure that gender-neutral terminology is used in defining the various jobs and occupations in the wage orders, and to provide specific information in this regard.*

*Article 4. Cooperation with workers' and employers' organizations.* The Committee notes the Government's indication that the representatives of employers' and workers' organizations are members of the Minimum Wage Board, and are included in the wage commissions when the Government forms such commissions. *The Committee asks the Government to provide more detailed information on the role of the social partners on the Minimum Wage Board and the wage commissions with respect to promoting and ensuring the application of the principle of the Convention. The Committee also once again asks the Government to indicate the specific measures taken to seek actively the cooperation of workers' and employers' organizations to give effect to the provisions of the Convention, including any training and awareness-raising activities on the principle of the Convention and the related provisions of the Labour Act.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1972)**

*Articles 1 and 2 of the Convention. Prohibition of discrimination.* For a number of years, the Committee has been raising concerns regarding the absence of legislative provisions prohibiting discrimination in employment and occupation based on all the grounds listed in *Article 1(1)(a)* of the Convention, with respect to all aspects of employment and occupation as defined in *Article 1(3)* of the Convention, and covering all workers. The Committee notes that the Government cites sections 19(1), 27 and 28 of the Constitution, which provide respectively that the State shall endeavour to ensure equality of opportunity to all citizens (section 19(1)); all citizens are equal before the law (section 27); the State shall not discriminate against citizens on the grounds only of religion, race, caste, sex or place of birth (section 28(1)); and women shall have equal rights with men in all spheres of State and public life (section 28(2)). The Committee recalls that general equality and non-discrimination provisions in the Constitution, although important, have generally not proven to be sufficient to address specific cases of discrimination in employment and occupation (General Survey on the fundamental Conventions, 2012, paragraph 851). The Committee notes in particular that the main non-discrimination provision of the Constitution is aimed at ensuring that the State does not discriminate, and does not address the situation of the private sector nor does it prohibit all the grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention. The Government provides no information on the outcome of the tripartite review of the Labour Act, which was scheduled to take place in 2009 and 2010, referred to in its previous reports. *The Committee asks the Government to take concrete steps to amend the Labour Act of 2006, so as to 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 covering all categories of workers, including domestic workers, and 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.* The Committee welcomes the adoption of the National Women's Development Policy 2011 and the National Education Policy 2010. The main goals of the National Women's Development Policy include ensuring full and equal participation of women in the mainstream activities of socio-economic development, building women's capacities through education and skills development, and eliminating all forms of discrimination against women and girls. Pursuant to the National Education Policy, the main objectives for women's education include encouraging and enhancing the efficiency of women to participate in decision-making processes, and ensuring women's participation in socio-economic development by engaging in different economic activities or self-employment. The Committee also notes the Government's indication that 62.28 per cent of the total allocation by the Rural Development and Cooperative Division is estimated to benefit women and girls; the Government also provides credit support to women for agricultural activities, as well as microcredit support to women for small-scale agricultural businesses. While welcoming these measures, the Committee observes that there remains significant gender segregation in the labour market. For example, the participation rate of women in the nursing college is 100 per cent, and in the directorate of nursing it is 92.5 per cent. The employment of women in the primary education sector is also high, and in non-registered private schools 95.2 per cent of the total number of teachers are women. In addition, a total of six Women's Technical Training Centres have been established, targeted at women who migrate as domestic workers to Middle-Eastern countries. The Committee also notes that the Bangladesh Computer Council has introduced a training course on information and communications technology specifically for women, benefiting 70 women in 2010–11. *The Committee asks the Government to continue to provide information on the measures taken to promote gender equality in employment and occupation, and the results achieved. The Committee also asks the Government to provide further information on the content of the training*



*provided by the Women's Technical Training Centres, and to indicate how it is ensured that access to education and vocational training for women is not limited in practice due to stereotyped assumptions regarding women's roles and capabilities. Recalling its previous comments, the Committee again urges the Government to take immediate steps to ensure that women have access, on an equal footing with men, to jobs in the public sector, and to provide full statistical information on the situation of men and women in the labour market, and in education and training.*

*Sexual harassment.* The Committee recalls section 332 of the Labour Act prohibiting conduct towards female workers that is indecent or repugnant to their modesty or honour, and the guidelines on sexual harassment issued by the High Court judgment in 2009. The Committee also notes the Government's indication that in the context of the ILO technical assistance project "Promoting gender equality and preventing violence against women at the workplace" from 2010 to 2012, awareness-raising activities to reduce sexual and non-sexual harassment of women at the workplace, targeting government officials, managers, trade union leaders and workers, were scheduled to be undertaken. The Committee also notes the Government's indication that, in cooperation with workers' and employers' organizations, it has enacted appropriate laws, and adopted policies and mechanisms concerning sexual harassment. However, the Government does not provide any details in this regard, nor is information provided regarding the consideration of this issue in the context of the review of the Labour Act, as previously indicated by the Government. ***The Committee asks the Government to provide specific 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. The Committee also asks 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. The Government is also requested to take measures to raise the awareness of workers, employers and their organizations regarding the rights, obligations and procedures with respect to sexual harassment in employment and occupation, and to provide specific information on progress made in this regard.***

*Article 5. Special measures of protection.* The Committee recalls that it has previously raised concerns regarding sections 39, 40 and 42, read with section 87 of the Labour Act 2006, which it considers to be gender biased with respect to women's capabilities and aspirations. The Committee recalls that pursuant to section 87, restrictions set out in sections 39, 40 and 42, which relate specifically to adolescent workers, including regarding working with machinery, are applied to women. The Committee notes the Government's indication that 90 per cent of women are Muslims, and wear a sari, therefore, they cannot work safely with dangerous or moving machines. While noting the Government's explanation, the Committee remains concerned that such limitations are based on stereotyped assumptions, equating women with adolescents in need of heightened protection, and are likely to impact negatively on women's employment opportunities. The Committee recalls that provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, and that it may be necessary to examine what other measures are necessary to ensure that women can access these types of jobs on an equal footing with men (General Survey, 2012, paragraph 840). The Committee notes that the Government again provides no information regarding the legislative review which was expected to address these provisions. ***The Committee asks the Government to take steps to review and amend sections 39, 40, 42 and 87 of the Labour Act, with a view to ensuring that women are able to access employment on an equal footing with men, and that any limitations or restriction applying to women are strictly limited to maternity protection.***

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

## Barbados

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (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:

*Legislative developments.* The Committee notes the observations by the Barbados Workers' Union (BWU), dated 31 August 2011, expressing disappointment at the time it has taken to enact legislation with respect to sexual harassment and employment rights. The BWU also indicates that the Employment Rights Bill will address discrimination in employment and occupation based on union status, HIV/AIDS status, disability, military and civic obligations imposed by law, pregnancy, race, colour, gender, marital status, religion, age, political opinion, national extraction, social origin or indigenous origin, or where the employee is responsible for the care and welfare of a child or a dependent family member. The Committee notes that it has been commenting for many years that the existing legislation does not provide full legislative protection against discrimination as defined under the Convention and that, in this context, the Government has been referring to the Employment Rights Bill since 2004. ***The Committee asks the Government to take steps without further delay to ensure full legislative protection against direct and indirect discrimination in all aspects of employment and occupation, for all workers, on all the grounds enumerated in Article 1(1)(a) of the Convention, namely race, sex, colour, religion, political opinion, national extraction and social origin. The Committee welcomes the additional grounds of discrimination, as foreseen in Article 1(1)(b) of the Convention, that appear to be included in the Employment Rights Bill, and asks the Government for information on the status of the process for the adoption of the Bill.***

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.***

## Belgium

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1952)**

*Measures to address the gender wage gap. New legislation.* The Committee notes with *interest* the adoption of the Act of 22 April 2012, the aim of which is to tackle the wage gap between men and women. The Act provides for the following: an obligation for enterprises with more than three employees to disaggregate by gender the data to be included in the social balance sheet; an obligation to negotiate measures to tackle the wage gap at inter-occupational and sectoral levels; and the organization of mandatory consultation in enterprises with 50 employees or more with a view to producing a “gender-neutral remuneration policy”. This requires a detailed analysis every two years of the structure of remuneration in the enterprise so as to establish, if the staff representatives deem it necessary, an action plan setting out specific objectives indicating the areas they are to cover and the instruments for obtaining them, a deadline for implementation and a system for monitoring it. The Act also provides for the possibility in enterprises with 50 employees or more of appointing a mediator to assist the employer and the workers in applying the measures to tackle the wage gap and to hear workers’ grievances concerning wage inequality. **The Committee asks the Government to provide information on the application of the Act of 22 April 2012 in practice, at sectoral and enterprise level, including any implementing texts and provide details on the appointment of mediators and the outcomes achieved, and on any difficulties encountered in giving effect to the Act.**

*Articles 2(2) and 3 of the Convention. Collective agreements. Job evaluation.* With regard to the implementation of collective agreement No. 25ter of 9 July 2008, which provides that all sectors and enterprises must review and adapt their job classification systems, the Committee notes the information from the Government that certain joint committees have reviewed their job classifications. The Committee notes in this connection that according to the Act of 22 April 2012, the social partners’ inter-occupational agreement and sectoral collective agreements must contain measures to tackle the gender wage gap, in particular by making job classification systems gender neutral. Furthermore, the job appraisal classification systems developed in joint committees must be submitted to the General Directorate of Collective Labour Relations of the Federal Public Service Employment, Labour and Social Dialogue for scrutiny of the gender neutrality of the systems. This is particularly so in the light of collective agreement No. 25 of 15 October 1975 on equal remuneration for men and women workers, and the checklist “Gender neutrality in job classification and evaluation”, produced by the Institute for the Equality of Women and Men (IEFH). If this scrutiny brings to light any elements that are not gender neutral, the joint committee concerned draws up a plan of action to remove them within two years. **The Committee asks the Government to provide information on the following points:**

- (i) **the conclusion of collective agreements and the content of the inter-occupational agreement to tackle the wage gap between men and women;**
- (ii) **details of the monitoring of job classifications by joint committees and the adoption of gender-neutral job classifications, and the number and content of any action plans produced by joint committees;**
- (iii) **the dissemination and the use made in practice of the tools developed for enterprises and the social partners, such as the job classification guide and the checklist “Gender neutrality in job classification and evaluation” produced by the IEFH, and the measures taken to provide training for the persons concerned.**

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

## Plurinational State of Bolivia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1973)**

*Principle of equal remuneration for men and women for work of equal value.* In its previous comments, the Committee noted the Government’s indication that the preliminary draft amendment to the General Labour Act provided that “the State, through the Ministry of Labour, shall promote the inclusion of women at work and shall guarantee the same remuneration as for men for work of equal value”. In this respect, the Committee notes that, according to the Government, work on this draft has come to a standstill because the Bolivian Central of Workers (COB), which is involved in its drafting, has requested that the health and municipal sectors participate in the work on the Labour Act. The Committee also notes that, according to a communication sent by the Government from the Vice-Ministry of Justice and Fundamental Rights, the National Plan of Action for Human Rights 2009–2013 refers, in its Chapter 6 on women’s rights, to the formulation and implementation of a cultural campaign for “equal work, equal wages, equal opportunities and equal rights” and that the body responsible for implementing this chapter is the Ministry of Labour. **Recalling that article 48 of the Constitution refers to the principle of equal remuneration for work of equal value, the Committee hopes that the General Labour Act will be adopted in the near future and that it will give full effect to the principle of the Convention. The Committee asks the Government to send information on any developments in this respect. The Committee also asks the Government to send specific information on the measures adopted by the Ministry of Labour, in the context of the implementation of Chapter 6 on women’s rights of the National Plan of Action for Human Rights, for which it is responsible.**

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

## ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1977)***

*Legislation. National Constitution.* In its previous comments, the Committee noted the adoption of the new National Constitution, of February 2009, which stipulates that the State's basic aims and functions are to establish a fair and harmonious society, without discrimination, with full social justice, with a view to consolidating plurinational identities while ensuring equal conditions between men and women. The Committee also notes that on 8 October 2010, Act No. 45 against racism and any form of discrimination was adopted, the objective of which is to establish mechanisms and procedures to prevent and punish racist behaviour and any form of discrimination through the establishment of public policies to provide protection against, and prevent, racist crimes and any form of discrimination. The Act applies to both the public and private sectors and to all Bolivian citizens and naturalized persons, as well as those living on the national territory. The Committee also notes that similar to the definition contained in the National Constitution, section 5(a) of the Act defines discrimination as all forms of discrimination, exclusion, restriction or preference based on a series of grounds; these include those listed in *Article 1(1)(a) of the Convention*, as well as additional grounds as foreseen in *Article 1(1)(b)*: sex, colour, age, sexual orientation or gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political or philosophical convictions, civil status, economic, social or health situation, profession, occupation or trade, level of education, different abilities and/or physical, mental or sensory disabilities, pregnancy, background, physical appearance, clothing, name or any other criteria that could nullify or impair the equal recognition of human rights and fundamental freedoms enshrined in the National Constitution and international law. Section 5(a) also stipulates that affirmative action measures shall not be considered discrimination. Section 5(b) establishes similar protection in the case of racial discrimination, considered to be any distinction, exclusion or preference based on grounds of race, colour, descent, or national or ethnic origin. Similarly, section 5(e) defines gender equality as being the recognition and valuing of the physical and biological differences of men and women, with a view to achieving social justice and equal opportunities, which guarantees that persons benefit fully from their rights irrespective of their gender in all areas of social, economic, political, cultural and family life. The Committee also notes Supreme Decree No. 0213 of July 2009, which establishes the mechanisms and procedures ensuring the right of every person not to be discriminated against in any selection and recruitment procedures in the public and private sectors. ***The Committee requests the Government to provide specific information on the implementation in practice of the National Constitution, of Act No. 45 against racism and any form of discrimination and Supreme Decree No. 213. The Government is also asked, in particular, to indicate the particular problems and difficulties of application that have been encountered in practice, and the way in which it is envisaged to deal with these. It is also asked to provide information on complaints submitted to the administrative or judicial authorities that might have been lodged in this respect. The Committee asks the Government to provide information on the status of the preliminary draft General Labour Act and firmly hopes that this Act will be in full conformity with the provisions of the Convention.***

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

## **Bosnia and Herzegovina**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1993)***

*Follow-up to representation pursuant to article 24 of the ILO Constitution.* The Committee recalls the communication of the International Trade Union Confederation (ITUC) and the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSS BiH), dated 20 August 2009, referring to the conclusions of the Governing Body of November 1999, regarding workers who had been dismissed from two undertakings on the ground of national extraction or religious belief. The conclusions had been made in the context of the representation made pursuant to article 24 of the ILO Constitution by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (USIBH) and the Union of Metalworkers (SM). In its communication, ITUC and SSS BiH state that the situation has not been resolved and, in addition, indicates generally that there have been more and more cases of open violations of the Convention, noting specifically discriminatory job advertisements. ***Noting that the Government's report does not contain any information in this regard, the Committee urges the Government to provide specific information on the progress of implementation of the recommendations of the Governing Body, and with respect to the measures taken or envisaged to address discriminatory job advertisements.***

*Article 1 of the Convention. Legislative developments.* The Committee notes with **interest** the adoption of the Prohibition of Discrimination Act of Bosnia and Herzegovina (BiH) (No. 59/09, entry into force 5 August 2009). The Act defines and prohibits direct and indirect discrimination, including in employment, entrepreneurship, education and training, on a range of grounds, whether real or assumed, namely race, skin colour, language, religion, ethnic affiliation, national or social origin, connection to a national minority, political or any other persuasion, property, membership in trade union or other association, education, social status and sex, sexual expression or sexual orientation (sections 2, 3 and 6). The Act also includes harassment, sexual harassment, mobbing, assistance and incitement to discriminate as forms of discrimination (section 4). The Committee notes that "employment" under the Act includes work and working conditions, including access to employment, occupation and self-employment, working conditions, remuneration, promotions and

dismissals; “training” includes all types and all levels of professional training, additional qualifications and requalifications, including gaining practical working experience (section 6). The mandate of the Ombud for Human Rights includes receiving individual and group complaints related to discrimination, collecting and analysing statistical data on discrimination cases, conducting surveys on discrimination, raising awareness of issues related to racism and racial discrimination in society, and improving policies and practices aimed at ensuring equal treatment (section 7). A claim can also be brought before the courts (sections 11 and 12). The Ministry for Human Rights and Refugees is to keep a database of discrimination cases (section 8). The Act also provides for the shifting of the burden of proof and protection against retaliation (sections 15 and 18). ***The Committee asks the Government to provide information on the practical application of the Prohibition of Discrimination Act, including the number and nature of complaints brought before the courts, the administrative bodies and the Ombud for Human Rights and the outcome thereof, including the remedies provided and sanctions imposed, as well as details regarding the other activities of the Ombud foreseen under the Act. Noting the Government’s statement that the Rulebook on the method of collecting data on cases of discrimination and the obligations arising from the adoption of the Act was being finalized, the Committee requests the Government to provide a summary of the Rulebook once it has been finalized.***

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

## Botswana

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)***

*Article 1 of the Convention. Equal remuneration for men and women for work of equal value. Legislation.* For a number of years, the Committee has been asking the Government to ensure that, in the process of amending the Employment Act, full legislative expression is given to the principle of equal remuneration for men and women for work of equal value. The Government has been indicating that the comments of the Committee would be taken into account and appropriate action would be taken to amend the law. The Committee notes, however, that the Government indicates that the Employment Act was amended in 2010 and merely reiterates its statement that the comments of the Committee will be considered in a future review of the Employment Act. The Committee also notes the Government’s indication that although the principle of the Convention is not reflected in the legislation, the definitions of “wage”, “basic salary” and “contract of employment” do not make a distinction between men and women and that wages and salaries are not based on the employee’s sex. The Committee points out that this is not sufficient to ensure that men and women are paid the same remuneration (basic salary and additional emoluments) for work of equal value, and that the concept of “work of equal value” is essential to address and eliminate pay discrimination based on gender. The Committee recalls that due to stereotypical attitudes regarding women’s aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (such as in caring professions) and others by men (such as in construction) and that often “female jobs” are undervalued in comparison with work of equal value performed predominantly by men when determining wage rates. The concept of “work of equal value” is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, going beyond equal remuneration for “equal”, “the same” or “similar” work, and also encompassing jobs that are of an entirely different nature, but which are nevertheless of equal value. The Committee therefore considers that it is essential to be able to compare the relative value of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal value overall (see General Survey on fundamental Conventions, 2012, paragraphs 673–675). ***In light of the above and with a view to ensuring that men and women have a legal basis for asserting their right to equal remuneration with their employers and before competent authorities, the Committee asks the Government to take the necessary measures to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and to provide information on any measures taken in this regard.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)***

*Article 1 of the Convention. Legal protection from discrimination. Grounds of discrimination. Covering all aspects of employment.* The Committee notes that section 23 of the Employment Act (restricting the grounds on which employers may terminate contracts of employment) was amended in 2010, so as to explicitly include in the list of prohibited grounds for termination of employment, “sexual orientation”, “health status” and “disability”, and at the same time removing from this list “national extraction” and “political opinions” (section 23(d)), and to insert a general provision (new section 23(e)). The Committee notes therefore that under the Employment Act as amended, termination of employment is now prohibited on the basis of: (i) “the employee’s membership of a registered trade union or participation in any activities connected with a registered trade union outside working hours or, with the consent of the employer, within working hours” (section 23(a)); (ii) “the employee’s race, tribe, place of origin, social origin, marital status, gender, sexual orientation, colour, creed, health status or disability” (section 23(d) as amended); or (iii) “any other reason which does not affect the employee’s ability to perform that employee’s duties under the contract of employment” (new section 23(e)). The Committee also notes that in accordance with the Code of Good Practice: Employment Discrimination, which was approved on 23 August 2002, discrimination is prohibited on the basis of “but not limited to” race, tribe, place of origin, national extraction, social origin, marital status, political opinions, sex, colour or creed (section 3.2). The Code of

Good Practice further indicates that there may be other grounds such as religion, HIV status, family responsibility, language, etc. While noting the general prohibition of discrimination added to the Employment Act, the Committee recalls that where legal provisions are adopted to give effect to the principle of the Convention, they should specify at least all the grounds of discrimination set out in *Article 1(1)(a)* of the Convention and cover all aspects of employment and occupation, including training, recruitment and selection and all terms and conditions of employment. Given that there are grounds specifically enumerated in the Employment Act, and the grounds of “national extraction” and “political opinion” have been expressly removed from this list, the Committee notes that it is of particular importance that all the grounds set out in *Article 1(1)(a)* of the Convention are specifically addressed in the Act. ***The Committee asks the Government to take the necessary steps to amend section 23(d) of the Employment Act in order to prohibit explicitly discrimination based on at least the grounds of race, colour, sex, religion, political opinion, national extraction and social origin, and to cover all aspects of employment and occupation, including recruitment and terms and conditions of employment. The Committee asks the Government to provide information on the measures taken in this respect. The Committee also asks the Government to provide information on the application in practice of section 23(e) of the Employment Act, including any interpretation by the administrative or judicial authorities. The Government is also asked to provide information on any steps taken to foster knowledge among workers and employers and their organizations of the code of good practice on employment discrimination.***

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

## Brazil

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)***

***Legislative developments.*** The Committee notes the adoption of Act No. 12288 issuing the Charter for Racial Equality, which is intended to guarantee for the black population equality of opportunity, the defence of their rights and action to combat discrimination. The Committee notes that the Act envisages the adoption of vocational training, employment and school attendance policies and programmes, the granting of incentives for the adoption of equality measures in the private sector, access to credit for small-scale production and awareness-raising campaigns against the marginalization of black women. The Committee also notes that the Secretariat for Women’s Policies has established a Working Group on Equality in the World of Work with a view to examining the Bill on equality and the elimination of discrimination. ***The Committee requests the Government to provide information on the implementation and impact in practice of Act No. 12288 issuing the Charter for Racial Equality, as well as information on the progress in the adoption of the Bill on equality and the elimination of discrimination.***

***Article 2 of the Convention. Equality of opportunity and treatment irrespective of race and colour.*** The Committee notes the statistical information disaggregated by race, colour (whites, blacks and mixed race) and sex provided by the Government. The data show that in 2010 the employment rate of mixed-race workers increased by 11.23 per cent, that of whites by 5.5 per cent and that of blacks by 7.89 per cent. The employment rate of indigenous workers rose by 5.1 per cent. The Committee further notes that the participation rate of black workers in the labour market remained at 5.5 per cent while that of mixed-race workers rose to 28.98 per cent in 2010. The data provided by the Government also show an increase in the educational level of black and mixed-race workers, although a disparity in productivity persists in relation to white workers which is due, according to the Government, to differences in educational levels. The Government adds that the participation rate of women in the labour market is 20 per cent lower than that of men, with that of white women being higher than that of women of African origin (59.4 and 55.7 per cent, respectively). The unemployment rate also shows the existence of differences on grounds of sex and race. While the unemployment rate of black women was 12 per cent, that of white women was 9.5 per cent, the rate for black men was 6.8 per cent and for white men it was 5.5 per cent. In relation to wages, the Government indicates that white workers receive a wage that is 46.40 per cent higher than that of black workers and 41.78 per cent higher than that of mixed-race workers, but emphasizes that the wage gap has been reduced since 2009. The Government emphasizes the need to provide greater training to people of African origin with a view to reducing the wage gap and enabling them to gain access to better quality jobs. The Government adds that the PlanSeQ for people of African origin has this objective and provides information on the numerous training activities undertaken in the context of the Plan. The Government also provides extensive information on the measures and activities taken in the context of the ethnic development solidarity project for Quilombola communities. While noting the statistics and the information supplied by the Government, which portray the persistent difficulty of black, mixed-race and indigenous workers in gaining access to employment and education, the Committee notes that the information provided does not enable it to fully assess the results and progress achieved over time as a result of the measures adopted. ***The Committee requests the Government to continue providing statistical data disaggregated by sex, race and colour as a basis for determining the distribution of workers in the various occupations, jobs and economic sectors. It also asks the Government to make further efforts to guarantee full equality of treatment and opportunities for all workers, irrespective of their gender, race, colour or ethnicity. In particular, the Committee requests the Government to continue supplying information on the measures adopted in practice in the context of these programmes and their impact on the eradication of discrimination. The Committee especially asks the Government to***

*provide information on the impact of the National Plan for Racial Equality for communities of African origin, indigenous and gypsy communities and the solidarity project for the ethnic development of Quilombola communities.*

*Discrimination on the ground of political opinion. Observing that the Government has not provided specific information on this subject, the Committee requests it to indicate the measures adopted with a view to ensuring that workers do not suffer discrimination on the basis of political opinion, including information on any complaints brought for this reason and their outcome.*

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 pointed out that the 2004 Labour Code did not clearly reflect the principle of the Convention. Even though it expressly established the principle of equal remuneration for men and women for work of equal value, it also provided for equal wages for workers regardless of their sex “given equal conditions of work, vocational qualifications and output” (section 175). In its previous observation the Committee also noted that section 182 of Act No. 028-2008/AN of 13 May 2008 issuing the Labour Code reproduces the provisions of the former Code with regard to equal remuneration for men and women. It pointed out that the coexistence of these provisions may lead to confusion or conflict when it comes to applying the principle of the Convention in practice. The Committee notes the Government’s explanation that these criteria must be read together and not separately. The Government adds that work of equal value is work that demands of employees a comparable set of occupational skills or capacities. The Government also states that in the interests of a more harmonious interpretation of certain provisions, it has organized training sessions for labour inspectors and controllers, employers’ and workers’ organizations, judges, assessors and arbitrators. While noting the Government’s efforts to disseminate the concept of “work of equal value” among the various stakeholders, the Committee nonetheless points out that two jobs may overall be of equal value yet may not be performed in equal conditions of work nor by persons whose qualifications or output are equal. The concept of “work of equal value” has to do with the nature of the work, in other words the tasks to be performed, and requires an evaluation of tasks based on objective criteria that are free from gender bias, such as skills and qualifications, physical and mental effort, responsibilities and working conditions. To limit work of equal value to work performed in equal conditions of work, requiring equal qualifications and output is to narrow the possibilities for job comparison, thus hindering full application of the principle of the Convention (see General Survey on the fundamental Conventions, 2012, paragraphs 672–679). *The Committee asks the Government to take the necessary steps to bring section 182 of the 2008 Labour Code into full conformity with the principle of equal remuneration for men and women for work of equal value laid down in the Convention and to provide information on measures taken in this regard. It furthermore encourages the Government to continue to provide training for persons responsible for enforcing equal remuneration between men and women for work of equal value in practice.*

The Committee is raising others 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)**

In its 2008 observation, the Committee noted the observations dated 30 August 2008 from the Trade Union Confederation of Burundi (COSYBU) on the application of the Convention, and noted that the Government had not replied to them. The Committee notes a new communication dated 31 August 2012 from COSYBU containing observations on the application of the Convention. COSYBU again highlights the existence of discriminatory recruitment practices in the public service, based on membership of the political party in power. According to the confederation, such practices are starting to become widespread in non-governmental organizations and foreign companies. *The Committee requests the Government to send any comments that it may wish to make in reply to the observations from COSYBU.*

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 through 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 near future.***

## Cambodia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)***

*Article 1(a) of the Convention. Definition of remuneration.* In its previous comments, the Committee noted that the definition of "wage" set out in section 103 of the Labour Law of 1997 excludes health care, legal family allowance, travel expenses and benefits granted exclusively to help the worker do his or her job, and thus is narrower than the definition of remuneration under the Convention. The Committee notes the Government's indication that Notification No. 230/2012 of the Ministry of Labour and Vocational Training provides for more benefits for workers in garment and footwear industries, including transportation and accommodation allowances. The Government states that it is not considering amending the Labour Law. The Committee recalls that the purpose of the broad definition of "remuneration", in particular the reference to "any additional emoluments whatsoever", enshrined in *Article 1(a)* of the Convention is to capture all elements that a worker may receive for his or her work including additional allowance paid in kind (see General Survey on fundamental Conventions, 2012, paragraphs 686, 690–691). ***The Committee encourages the Government to take steps to amend the Labour Law in order to bring it in line with Article 1(a) of the Convention.***

*Article 1(b). Work of equal value.* The Committee recalls that section 106 of the Labour Law provides for equal wages for workers for "work of equal conditions, professional skill and output ... regardless of their origin, sex or age", which is narrower than the principle set out in the Convention. It also recalls that the concept of "work of equal value" under the Convention not only encompasses equal remuneration for workers who work under equal conditions, professional skill and output, but also allows for the comparison of jobs that are of an entirely different nature, but which are nevertheless of equal value (see General Survey, 2012, paragraph 677). The Committee notes that the Government's report does not contain information in this respect. ***Recalling the importance of giving full legislative expression to the concept of "work of equal value", in order to address effectively direct or indirect pay discrimination that results from the undervaluing of work performed predominantly or exclusively by women, the Committee again urges the Government to take steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. It hopes that progress will be made in the near future, and asks the Government to provide specific information on the concrete steps taken in this regard.***

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

## Cameroon

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1970)**

*Article 1(b) of the Convention. Work of equal value. Legislation.* For several years the Committee has been drawing the Government's attention to the fact that section 61(2) of the Labour Code makes payment of an equal wage to all workers, regardless of their origin, sex, age, status and religious belief, contingent on there being "equal conditions of work and skill", so that it does not give full effect to the principle of equal remuneration for work of equal value. The Committee recalls that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and of the promotion of equality. Due to stereotypical attitudes regarding women's aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women and others by men. When wage rates are determined, "female jobs" are often undervalued in comparison with work of equal value performed by men. The concept of "work of equal value" is therefore fundamental to tackling occupational sex segregation, because it permits a broad scope of comparison, including equal remuneration for "equal", "the same" or "similar" work, but also encompassing equal remuneration for jobs that are of an entirely different nature but which are nevertheless of equal value (see General Survey on fundamental Conventions of 2012, paragraph 673). The Committee again notes that the Government refers to the Bill to revise the current Labour Code and states that the version of the draft examined by the Advisory Labour Committee amends section 61(2) of the Labour Code to align it with the Convention. *Noting that the Bill is currently under examination by the Prime Minister's Office, the Committee trusts that the Government will be able to confirm its adoption in the near future and that the new text will contain provisions that fully reflect the principle of equal remuneration for men and women for work of equal value laid down in the Convention. The Government is asked to continue to provide information on progress made in the revision of the Labour Code and to provide copies of the Act to amend it as soon as it has been adopted.*

*Article 2(2)(c). Collective agreements.* For several years the Committee has been pointing out that section 70 of the CAMRAIL collective agreement is discriminatory in that it grants travel allowances only to the wife and children of a worker and not to the husband of a female employee. It has asked the Government to take the necessary steps to ensure that the provisions of the CAMRAIL collective agreement comply with the principle of equal remuneration for men and women for work of equal value. The Committee notes that the Government again states that it is in the process of taking the necessary steps to ensure that the clauses of the CAMRAIL collective agreement observe the principle established in the Convention. It also indicates that the forthcoming revision of the collective agreement will enable the Joint Committee to examine the discriminatory provision. The Committee notes that in a communication of 20 October 2011 the Cameroon Trade Union Congress (CTUC) indicates that in violation of the Convention, the employers refuse to apply the principle of equal remuneration in collective agreements, and there is no pressure on them to do so. *In view of the Government's commitments, the Committee trusts that it will shortly be in a position to report that the discriminatory clauses on additional emoluments in the CAMRAIL collective agreement have been revised, and asks the Government to provide information in this regard. Furthermore, in the absence of a reply on the matter, it again asks the Government to state more generally the action taken to encourage the social partners to examine collective agreements in the light of the principle of equal remuneration for men and women for work of equal value and to revise any discriminatory clauses identified. Please also provide copies of relevant extracts of collective agreements.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1988)**

The Committee notes that the report submitted by the Government in 2012 is identical to the one which it sent in 2011. The Committee therefore hopes that the Government will supply information in reply to the questions raised in its previous observation, which dealt with the points raised below. *The Committee notes the observations made by the General Union of Cameroon Workers (UGTC) in a communication dated 29 October 2012, and invites the Government to send any comments in reply to these observations.*

*Article 1(1)(a) of the Convention. Legislation.* The Committee notes that the Government merely reaffirms that it is in the process of completely revising the Labour Code and its implementing regulations and that this revision will incorporate provisions defining and prohibiting direct and indirect discrimination based on each of the grounds listed in the Convention. *Noting that the Bill revising the Labour Code has been examined by the Labour Advisory Committee and that it is being examined by the Prime Minister's office, the Committee trusts that the Government will be in a position to report on the adoption of this text in the near future and that it will contain provisions defining and explicitly prohibiting direct or indirect discrimination based on at least all the grounds listed in the Convention, in all aspects of employment and occupation, including access to vocational training. The Government is also requested to continue to supply information on progress made on the revision of the Labour Code and to forward a copy of the Act revising the Labour Code, once it has been adopted.*

*Discrimination based on sex.* For a number of years the Committee has been urging the Government to take specific steps as soon as possible to implement the process of legislative reform in order to remove from the national legislation the provisions that have the effect of destroying or impairing equality of opportunity or treatment for women in



employment and occupation, especially the provisions of the Penal Code and the Civil Code and also Decree No. 81-02 of 1981, which gives the husband the right to object to his wife working by invoking the interests of the household and the children. The Committee notes that the Government merely indicates that these provisions will be removed. Furthermore, as regards the progress of the Bill concerning the prevention and suppression of violence against women, the Government indicates that this is being examined by the Ministry for Women and the Family. ***The Committee is therefore bound to repeat its request and urges the Government to adopt without delay: the necessary measures to ensure that provisions that have the effect of discriminating against women in employment and occupation are removed from the legislation; and specific measures to combat stereotyping and prejudice regarding the respective roles of women and men in society so as to remove obstacles to the employment of women. The Committee hopes that the Government will soon be in a position to report on the adoption of the Act concerning the prevention and suppression of violence against women and discrimination based on sex, and requests the Government to provide a copy of this text, once it has been adopted.***

***Article 2. National equality policy.*** The Committee recalls that the primary obligation of ratifying States is 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 any discrimination in respect thereof, and that specific, targeted measures need to be adopted to achieve this objective. These measures should make an effective contribution to the elimination of direct and indirect discrimination and the promotion of equality of opportunity and treatment for all categories of workers, in all aspects of employment and occupation, and in respect of all the grounds of discrimination covered by the Convention (see General Survey on the fundamental Conventions, 2012, paragraphs 841–847). ***Recalling that no society is completely free from discrimination, the Committee urges the Government to take the necessary measures as soon as possible to formulate and implement a national equality policy including programmes of action and specific measures to promote equality of opportunity and treatment without any distinction as to race, colour, sex, religion, political opinion, national extraction or social origin and to take steps to address discriminatory practices in employment and occupation. The Government is requested to provide information on progress made in the formulation and implementation of this policy and on the results achieved.***

The Committee further notes that the report does not contain any reply to its previous comments, which read as follows:

***Discriminatory job offers.*** The Committee notes the communication of 9 September 2011, in which the General Union of Workers of Cameroon (UGTC) alleges that some companies continue to advertise gender-based job vacancies. The Committee points out that job vacancies addressed solely to men or to women are discriminatory unless the requirement for a man or a woman is inherent in the job (*Article 1(2)*), and that such exceptions must be interpreted narrowly to avoid restricting the protection afforded by the Convention unduly. ***The Committee requests the Government to provide information in reply to the UGTC's allegations, specifying in particular whether labour inspectors have dealt with instances of discriminatory employment vacancies addressed solely to men or to women, indicating any action they may have taken in such instances, for example, the penalties imposed.***

***Discrimination based on race, colour and national extraction.*** The Committee recalls the comments made by the General Confederation of Labour-Liberty (CGT-Liberté) concerning the Equal Remuneration Convention, 1951 (No. 100), alleging that certain enterprises apply wage differentials on the basis of ethnic origin. The Government indicates in its report that the Labour Code prohibits wage discrimination and that it is up to victims and trade unions to take legal action. In this respect, the Committee notes from the PAMODEC survey that the provisions in force regarding the system of the burden of proof with respect to discrimination make it very difficult for workers to prove that they are the victims of pay discrimination. This document adds that this is one of the reasons why, despite the fact that discrimination is felt to be widespread, legal action against discrimination is rarely seen. ***The Committee requests the Government to supply information on all the measures taken to guarantee the effective application of the principle of equality of opportunity and treatment in respect of employment without any distinction on the basis of race, colour or national extraction, including the measures taken in law and in practice to help workers to prove the existence of discrimination.***

***Article 5. Special measures of protection for women.*** The Committee notes the observations of 20 September 2010 by the UGTC alleging that some jobs and occupations are reserved for one or the other sex, a case in point being the firefighters of the firm ASECNA, which recruits only men. The Committee refers to its previous comments on the need to revise the list of jobs prohibited for women set forth in Order No. 16/MLTS of 27 May 1969, and notes the Government's statement that the revision of the Labour Code now under way will provide an opportunity to revise the list of jobs prohibited for women. ***Recalling that measures of protection for women must be restricted to maternity protection and must not be based on stereotypes regarding women's professional abilities and their role in society, which confine women to certain jobs, the Committee urges the Government to take the necessary steps to amend the list of jobs prohibited for women in the light of these principles and to take measures to eliminate the obstacles to women's employment in practice. Please provide information on the measures taken to this end and send a copy of the Order as soon as it has been revised.***

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

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 2014.]***

## Canada

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1972)**

The Committee notes the observations provided by the Canadian Labour Congress (CLC) referred to in the Government's report as well as the Government's reply thereto.

*Legislative developments. Federal.* The Committee recalls that the Public Sector Equitable Compensation Act (PSECA), adopted in 2009, was expected to come into force once regulations were enacted. The Committee notes that consultations with stakeholders on the development of the regulations have begun and are scheduled to end in 2012. The Government indicates that the PSECA was enacted with a view to ensuring equal remuneration for men and women for work of equal value and the Government considers that the Act fully complies with the obligations under the Convention. The Committee recalls that the PSECA provides for an equitable compensation assessment of female dominated job groups (to be defined by regulations) or job classes (defined as classes composed of at least 70 per cent female employees) to assess the value of the work performed, without gender bias, which assessment is to lead to a plan to address any equitable compensation matters. The Committee also notes that "job class" is defined in section 2 to mean "two or more positions in the same job group that have similar duties and responsibilities, require similar qualifications, are part of the same compensation plan and are within the same range of salary rates". The Committee recalls that pursuant to the Convention, comparisons should be able to be made not only between jobs that have similar duties and responsibilities, require similar qualifications, are part of the same compensation plan or are within the same salary rate, but also between jobs that are entirely different in nature. It is not clear whether such comparison is provided for in the Act.

The Committee notes the continuing concerns expressed by the CLC which recommends that the Act be repealed and replaced by a proactive federal pay equity law, as initially recommended by the Pay Equity Task Force. The concerns raised by the CLC, which are similar to the concerns previously raised by the Parliamentary Standing Committee on the Status of Women in its June 2009 report, include the application of "market forces" as a standard to assess the value of work, the high threshold for defining a "female dominated group", the difficulty for individual women in bringing a complaint, and the move from a rights-based approach to pay equity, as set out by the Canadian Human Rights Act, to equal remuneration being a matter for negotiation. The Committee recalls that although the criteria to assess the value of work performed are linked to skill, effort, responsibility and conditions of work under the Human Rights Act, the assessment under the PSECA can be limited by factors such as market forces which may be inherently gender-biased and may not adequately ensure a non-discriminatory assessment.

The Committee notes the Government's indication that in the process of developing regulations to the PSECA, consultations are being undertaken with bargaining agents, employers, employees and others, and that the Government will be mindful of the impact of the regulations in implementing the policy goals of the legislation. The Government also indicates that under the PSECA, new positive obligations are established on employers and bargaining agents, including proactively examining compensation on a regular basis to determine whether there are any issues of equal remuneration that need to be addressed, as well as preparing reports and making them available to employees setting out how any identified equitable compensation matters are being resolved. The Committee notes that claims of non-compliance can be brought by employees to the Public Service Labour Relations Board, and that unionized employees continue to have access to other dispute resolution mechanisms such as arbitration and conciliation. The Committee also notes that employers and bargaining agents must refrain from "engaging in any conduct that may encourage or assist any employee in filing or proceeding with a complaint" under the Act (section 36); which is considered to be an offence and renders the offender liable on summary conviction to a fine not exceeding 50,000 Canadian dollars (CAD) (section 41). The Committee further notes the Government's indication that a periodic review of compensation based on the principle of equal remuneration for work of equal value is included in the PSECA; occurring on a regular basis for unionized employees and required by employers under the Act for non-unionized employees in time frames that will be established in the forthcoming regulations.

*The Committee asks the Government to provide information regarding the PSECA on the following:*

- (i) *the result of the consultations undertaken in the development of the regulations accompanying the PSECA, including any concerns raised and how such concerns have been addressed;*
- (ii) *the status of the adoption of the regulations and the bringing into force of the Act;*
- (iii) *how the equitable compensation on assessments are undertaken in practice, and how the right to equal remuneration for men and women for work of equal value is ensured in situations where the jobs being undertaken are of an entirely different nature, but are nevertheless of equal value;*
- (iv) *how it is ensured that assessments made under the PSECA are not gender biased, particularly given that factors such as market forces may be inherently gender biased;*
- (v) *any steps taken or envisaged to assist individual women in bringing complaints under the PSECA or to extend the procedures to permit collective claims;*
- (vi) *any steps taken or envisaged to ensure that the right to equal remuneration for men and women for work of equal value has not been diminished through the redefinition of the female dominated group or class.*

*Noting that assistance given to employees in filing or proceeding with a complaint is considered to be an offence under the PSECA, the Committee asks the Government to consider repealing this prohibition as it may hinder the application of the right to equal remuneration for work of equal value in practice.*

*Legislative developments. Provincial.* The Committee notes that, under the *New Brunswick Pay Equity Act*, which came into force on 1 April 2010, employers and bargaining groups have begun working on job evaluations using non-discriminatory job evaluation systems and were required to submit their reports by 31 May 2012 and start making pay adjustments on 1 April 2012. The Committee also notes that in *Quebec*, the Regulation respecting the report on pay equity (R.R.Q., c. E-12.001, r. 1) came into force on 1 March 2011, following the amendments brought to the Pay Equity Act in 2009, and indicates which employers are subject to the reporting obligation on pay equity and what information should be submitted by employers in their reports to determine whether they are effectively monitoring pay equity in their enterprise. The Government indicates that data would be compiled by autumn of 2012. The Committee also notes that *Newfoundland and Labrador* enacted the Human Rights Act in June 2010, which includes equal pay for work of equal value provisions similar to those found in earlier legislation. ***The Committee asks the Government to provide information on the implementation of the job evaluations conducted in New Brunswick, including regarding the reports submitted and any consequent pay adjustments. The Committee also asks the Government to provide information on the application of the revised Quebec Pay Equity Act and the Regulation respecting the report on pay equity, including on the number of employers that have reported and the data collected.***

*Work of equal value.* In its previous observations, the Committee has been noting 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, because the legislation limited comparisons to jobs involving the same work, similar work or substantially similar work. The Committee notes that the Government does not provide information on any changes in this regard. The Committee recalls that the legislation in *Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan, the North Territories* and the *Yukon* does not give full legislative effect to the principle of equal remuneration for work of equal value; and that in 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. The CLC considers that the current state of Canada's pay equity legislation remains inconsistent and in provinces that do not have any pay equity legislation, there are only inadequate provisions in provincial human rights legislation to rely upon. ***The Committee must once again urge 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 on any steps taken in this regard, including regarding any consultations undertaken with workers' and employers' representatives and representatives of the provinces and the territories concerned.***

*Enforcement.* The Committee notes with *interest* the decision of the Supreme Court of Canada in the case of *Public Service Alliance of Canada v. Canada Post Corp*, delivered 17 November 2011, reinstating a decision of the Canadian Human Rights Tribunal, finding that clerical work, performed mostly by women, was of equal value to the higher paying sorting and delivery work (postal operations) which was performed mainly by men. The Committee notes that the decision concerns jobs of a different nature but which were determined through the Hay method of job evaluation to be of equal value. The Committee notes with *concern* however, that the initial pay equity claim was filed pursuant to section 11 of the Canadian Human Rights Act, before the Canadian Human Rights Commission in 1983 with a final decision being rendered 28 years later. ***The Committee asks the Government to provide information on whether any steps are being taken or envisaged to ensure that remedies for equal remuneration are accessible, and available within a reasonable time.***

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

## Cape Verde

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1979)***

*Article 1 of the Convention. Work of equal value.* The Committee recalls that article 61 of the Constitution provides for the principle of equal remuneration for equal work and that section 16 of the Labour Code provides that all workers have the right to fair remuneration according to the nature, quantity and quality of work. According to this section, all differences in remuneration for men and women based on objective criteria (merit, productivity and performance) are not considered discriminatory. In this regard, the Committee recalls that in their communications, the Commercial, Industrial and Agricultural Association of Barlovento (ACIAB), the National Union of Workers of Cape Verde–Trade Union Confederation (UNTC–CS) and the Cape Verde Confederation of Free Trade Unions (CCSL) have referred to the need to promote a better understanding among the social partners of the principle of equal remuneration for men and women for work of equal value provided for in the Convention. The Committee notes that the Government merely reiterates the information provided in its previous report. The Committee recalls once again that the provisions in the Constitution and in the Labour Code are insufficient to ensure the full application of the principle of the Convention because they do not encompass the concept of "equal value", and may therefore hinder progress in eliminating gender-based pay discrimination. Moreover, while criteria such as quality and quantity of work may be used to determine the

level of earnings, the use of only these criteria is likely to 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 which are free from gender bias. *The Committee asks the Government to take steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and recalls that such provisions should not only cover situations where men and women are performing the same or similar work but also situations where they carry out work that is of an entirely different nature but is nevertheless of equal value. The Committee asks the Government to provide information on any development thereon as well as on any awareness-raising campaigns or activities carried out with respect to the implementation of the principle of the Convention. Noting that section 15(1)(b) of the Labour Code provides that equity at work includes the right to receive special compensation; a compensation which is not allocated to all workers, but which is based, among other grounds, on sex, the Committee asks the Government to indicate the manner in which this provision is implemented in practice.*

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

## Central African Republic

### **Equal Remuneration Convention, 1951 (No. 100) (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:

*Articles 1 and 2 of the Convention. Application in law of the principle of equal remuneration between men and women for work of equal value.* The Committee refers to its previous observation in which it noted with regret that the new Labour Code (Act No. 09.004), because it limited equal wages to jobs involving "equal working conditions, skills and output", did not give full effect to the principle of equal remuneration for men and women for work of equal value. It had therefore asked the Government to amend the relevant provisions of the Labour Code. *Noting that the Government's report does not contain any information on measures envisaged or taken in this respect, the Committee asks the Government once again to take the necessary steps to amend sections 10 and 222 of Act No. 09.004 issuing the Labour Code so as to provide explicitly for equal remuneration between men and women for work of equal value, and to provide information on any 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.*

## Chad

### **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:

*Article 1(1)(a) of the Convention. Grounds of discrimination.* In its previous comments, the Committee asked the Government to amend the national legislation in order to ensure that it at least covers discrimination on the basis of all the grounds listed in the Convention, including a prohibition on any discrimination based on race or colour. While noting the Government's statement that it faces difficulties which prevent it from revising the Constitution accordingly, the Committee wishes to draw the Government's attention to the fact that these grounds could be included in the provisions of the Labour Code concerning discrimination (sections 6 and 7), which in their current wording cover sex, age, nationality, membership or non-membership of a trade union, trade union activity, and the origin and opinions (particularly religious and political) of the worker, or that regulations implementing the Labour Code could be adopted to also cover race and colour before any revision of the Constitution is undertaken. *The Committee therefore requests the Government to take the necessary steps to adopt legislation, or revise existing legislation or expand the provisions of the Labour Code so that at least all the grounds on which discrimination is based, which are prohibited under the terms of Article 1(1)(a) of the Convention, are expressly covered by the national legislation, and to supply information on the measures adopted in this respect.*

*Discrimination on the basis of sex.* For a number of years, the Committee has been drawing the Government's attention to the incompatibility of section 9 of Ordinance No. 006/PR/84 of April 1984 issuing regulations on trading with the provisions of the Convention and has asked the Government to take the necessary steps to repeal this provision. *In view of the lack of any reply from the Government on this point, the Committee requests the Government to state whether the 1984 Ordinance is still in force and, consequently, to clarify whether a husband still has the right to object to the commercial activities of his spouse. If so, it urges the Government once again to repeal section of the Ordinance because of their discriminatory nature with regard to women.*

*Sexual harassment.* *In view of the lack of information on the measures taken or contemplated to combat sexual harassment in the workplace, the Committee is bound to repeat its request in this respect, referring once again to its general observation of 2002, in which it emphasizes that sexual harassment undermines equality at work by jeopardizing the integrity, dignity and well-being of workers and is harmful to enterprises by weakening the foundations of the employment relationship and reducing productivity.*

*Article 1(1)(b). Additional grounds of discrimination.* The Committee notes the adoption of Act No. 019/PR/2007 of 15 November 2007, protecting the rights of persons living with HIV and AIDS. This Act contains provisions which define the denial of access to employment for HIV-positive persons as a discriminatory act (section 22), prohibit screening for HIV in relation to obtaining employment, promotion, training or benefits (section 36), guarantee employment to any employee who is living with HIV as long as he or she is capable of working, and guarantees the offer of acceptable replacement work (section 36), and prohibit any penalty or dismissal on the basis of the worker's HIV status (section 38). *The Committee requests the*

*Government to indicate whether the implementing decrees provided for in section 64 of the Act No. 019/PR/2007 have been adopted, particularly as regards the abovementioned provisions relating to the right to work (sections 32–41) and, if so, to provide a copy of the decrees. The Government is also requested to provide information on any measure taken or contemplated to ensure the effective implementation of these legislative provisions against discrimination towards, and stigmatization of, persons living with HIV and AIDS, for example awareness-raising campaigns on equality at work intended for workers' and employers' organizations, labour inspectors, magistrates and the general public.*

*Also noting, according to the information contained in the report drawn up by the Ministry of Education in October 2008 on the development of education, that an Act on the protection of disabled persons has been adopted, the Committee requests the Government to send a copy of it to the Office and indicate the steps taken to ensure in practice the equality of opportunity and treatment in respect of employment and occupation for disabled persons.*

*Article 2. National policy to promote equality. Access to education and vocational training.* As regards education and training, on which actual possibilities of access to employment and occupation in both the public and private sectors depend, the Committee notes the adoption of Act No. 016/PR/06 of 13 March 2006 issuing guidelines for the Chadian education system, which focuses on combating the exclusion from education of groups considered the most vulnerable, namely girls living in rural areas, nomadic and lake-dwelling groups, street children, physically disabled persons, refugees and displaced persons, child domestic workers, child herders and child soldiers. The objectives of this Act include “ensuring equitable access to high-quality education for all Chadian children” and “promoting schooling for girls by removing stereotypes and other socio-economic and cultural obstacles to the full development of girls and women in terms of the education process”.

The Committee also notes, according to the abovementioned report on education, that incentives aimed at making school attendance more attractive to girls are provided for in the “National plan of action for education for all” and that experimental action has been taken in four pilot areas to promote schooling for girls, such as awareness raising on a large scale with regard to gender issues, grants to communities to undertake income-generating activities, waiving school fees and no age limits on school enrolment for girls, etc.

*Welcoming the efforts made and the desire shown by the Government to achieve greater equality in the area of education and training, the Committee hopes that the planned measures to promote equal access to education will be implemented in the near future and that the abovementioned experimental measures can be extended throughout the country in order to rectify the inequalities which exist in practice. It requests the Government to supply information on the results achieved, in the context of the various mechanisms established, with respect to schooling and access to vocational training for girls and women, particularly those living in rural areas. Please also provide information on any measure taken or contemplated to combat discrimination on grounds other than sex in education and vocational training, including the results achieved.*

*Article 3(d). Employment in the public sector.* The Committee requests the Government to provide as detailed information as possible on the measures taken or contemplated to promote and guarantee equality of opportunity and treatment in the public sector, including the results achieved by these measures in terms of employment, promotion and training of women within the public service. The Government is also requested to supply all available statistical information on the numbers of men and women employed at different levels in public service and, more generally, in the public sector.

*Part V of the report form. Practical application and statistics.* The Committee notes that in reply to its request for statistics the Government indicates that it will soon give labour inspectors the means to gather information relating to the situation of workers on the ground. The Committee requests the Government to indicate the steps taken to equip labour inspectors with the appropriate resources and to supply the statistical information thus obtained on employment in the private and public sectors, disaggregated by sex, and also any statistical information available on employment in the informal economy, in order to enable an evaluation of the effect given to the Convention in practice.

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

## Chile

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1971)**

The Committee notes the Government's reply to the observations of the National Association of Public Employees (ANEF), the Association of Employees of the Women's National Service (SERNAM), the College of Teachers of Chile AG, the National Confederation of Trade and Services and the Confederation of Unions in the Banking and Financial System of Chile, dated 15 September 2011, which the Committee is addressing in its examination of the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee also notes the observations of 14 June 2012 of the Federation of CODELCO Chile Supervisors and Professionals (FESUC), stating that CODELCO workers hired since 2010, more of whom are women than previously, do not receive the same remuneration or have the same working conditions as those hired prior to 2010. *The Committee asks the Government to send its comments on this matter.*

*Work of equal value.* In its previous comments the Committee referred to Act No. 20348 of 2 June 2009, inserting section 62bis into the Labour Code establishing that employers must observe the principle of equal remuneration for men and women who carry on the same work, and asked the Government to revise this provision in order to bring it into conformity with the Convention. The Committee notes that the Government refers to a document entitled *Temas Laborales núm. 27*, on the “right to earn the same”, produced by the Labour Directorate, which highlights the difficulties in applying Act No. 20348 and the discrepancy between the principle established in the Act and that established in the Convention and recognizes that the Act is restrictive in that it refers to the same work rather than work of equal value thus weakening protection of women's wages. The Committee observes that the Government does not state whether any measures have been taken to amend this provision. *The Committee urges the Government to take the necessary steps to revise section 62bis of the Labour Code in order to ensure equal remuneration for men and women not only in*

*situations in which they perform equal or similar work but also in situations in which they carry out jobs which are different but which are 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)***

The Committee notes the observations made by the National Association of Public Employees (ANEF), the Association of Employees of the National Women's Service (SERNAM), the College of Teachers of Chile AG, the National Confederation of Trade and Services and the Confederation of Unions in the Banking and Financial System, dated 15 September 2011. The Committee notes that, according to the trade union organizations, the current private pensions system, which is based on a fully funded scheme, is discriminatory in relation to women due to the use of differentiated mortality scales for men and women. As a result of the use of these scales, a man and a woman worker with equal accumulated funding who take retirement at the same age would receive annuities of differing amounts solely based on sex. The Committee notes the Government's indication in its reply that the use of differentiated scales is due to the life expectancy of women being higher and that the pensions of those affiliated to the private system are financed by their contributions. The Government adds that if the system of unisex scales were to be applied, women's pensions would increase, but would be exhausted more rapidly. The Government adds that the Presidential Advisory Council for Pensions Reform assessed whether unisex mortality tables should be introduced and found that it was not to be recommended for various reasons, including the following: the risk that may exist that the reserves constituted by insurance companies are not adequate; the implication of a cross subsidy between men and women; and the lack of experience of the application of unisex tables in other countries with individually funded pension systems. ***Noting that the use of differentiated mortality scales has the consequence that women receive lower pensions than men due to their longer life expectancy, which could be discriminatory, the Committee requests the Government to assess the real impact of differentiated scales based on their implementation at present on the amounts of the pensions actually received by pensioners and to provide information in this regard.***

*Article 1 of the Convention. Legislation.* The Committee notes the adoption of Act No. 20609 of July 2012 establishing measures to combat discrimination. The Committee notes that the Act is of broad application, covering all persons, and that its objective is to introduce judicial machinery to address cases of discrimination against any person. The Act lays down the following grounds of discrimination: race or ethnic origin, nationality, socio-economic situation, language, ideology or political opinion, religion or belief, trade union membership or participation in industry organizations or non-membership or participation, sex, sexual orientation, gender identity, civil status, age, family rank, personal appearance and illness or disability. While noting the inclusion of new criteria of discrimination, the Committee observes that the criteria of colour, national extraction and origin are not included in the list set out in the Act, even though they are included in section 2 of the Labour Code. ***The Committee requests the Government to indicate the manner in which the Labour Code and Act No. 20609 are applied in practice and their interrelation in terms of the criteria established and the remedies available to victims. Please also provide information on the implementation of the Act in practice in relation to employment and occupation.***

The Committee also notes the observations of the Trade Union Federation of the Category "A" of Supervisors and Professionals of CODELCO Chile (FESUC) of 14 June 2012 indicating that the workers in CODELCO recruited since 2010, who include more women than those recruited previously, do not receive the same remuneration or have the same conditions of work as those recruited prior to 2010. The FESUC adds that the Code of Conduct adopted by the enterprise in 2011 contains the following phrase: "I am aware that the reputation of CODELCO may be prejudiced if I participate in political activities while I am a worker in the enterprise, even if I do so outside working hours". ***The Committee requests the Government to provide its observations in this connection.***

*Discrimination based on sex.* The Committee has been observing for several years that, with a view to granting spouses equal rights, it is necessary to amend section 349 of the Code of Commerce, which provides that married women who at the time of their marriage did not decide to make an agreement with their husband choosing the separate property regime may only enter into a commercial partnership agreement with the special permission of their husbands. In this respect, the Committee notes the Government's indication that on 5 April 2011 the President of the Republic forwarded to the Chamber of Deputies a Bill to amend the Civil Code and other legislation to regulate the property regime for marriage, which was based on two earlier bills. The new Bill, which is currently in the first stage of the constitutional procedure before the Chamber of Deputies, provides for equality before the law for husbands and wives, the full capacity of both spouses and the economic protection of the spouse who has cared for the children or the household, and has accordingly worked less. ***The Committee requests the Government to continue providing information on the progress of the Bill to modify the property regime established in the Civil Code and to indicate whether it envisages the amendment of section 349 of the Code of Commerce so that women can enter into commercial partnership agreements without special permission from their husbands.***

*Bill on discrimination.* The Committee notes the recent approval by the Senate of a Bill to combat discrimination. ***The Committee requests the Government to provide information on the progress of the Bill before Parliament and to provide a copy of the text as soon as it has been enacted.***

*Persons of African descent.* The Committee noted previously, in the context of its examination of the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Government's indication of the existence of a Bill recognizing the ethnic group of persons of African descent. ***The Committee requests the Government to provide information on the stage of the parliamentary process with regard to this Bill and to provide a copy of it once it has been adopted.***

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

## China

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1990)***

*Article 1(b) of the Convention. Work of equal value. Legislation.* The Committee recalls that section 46 of the Labour Law of 1994 and section 11 of the Labour Contract Law of 2007 refer to "equal pay for equal work", which is narrower than the principle of the Convention, because it does not encompass the concept of "work of equal value". The Committee notes the Government's indication that wage regulations, which are not yet in force, will specify equal pay for equal work. The Committee draws the Government's attention to the importance of the concept of "work of equal value", which lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value and the promotion of equality, and which should apply to all workers. The concept of "work of equal value" is fundamental to tackling occupational gender segregation in the labour market, with women concentrated in certain sectors, and at specific levels of the occupational hierarchy, because it permits a broad scope of comparison, going beyond equal remuneration for equal work. The concept of "equal value" requires some method of measuring and comparing the relative value of different jobs undertaken on the basis of entirely objective and non-discriminatory criteria, and allows for comparisons between jobs that are of an entirely different nature, but are nevertheless of equal value (see General Survey on fundamental Conventions, 2012, paragraphs 658, 673 and 695). ***The Committee asks the Government to take concrete steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, so that it covers not only situations where men and women perform the same work but also encompasses work that is of an entirely different nature, which is nevertheless of equal value and to provide information in this regard.***

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

## Colombia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)***

The Committee notes the observations of the Confederation of Workers of Colombia (CTC) and the Association of Officials of the Medellín Municipality (ADEM) of 29 October 2011, and the Government's reply. The Committee also notes the observations of 31 August 2012 from the Single Confederation of Workers of Colombia (CUT), and those of 5 September 2012 from the General Confederation of Labour (CGT). The Committee further notes the observations of the International Organisation of Employers (IOE) received on 8 September 2012. ***The Committee asks the Government to send its observations on the above comments.***

*Article 1 of the Convention. Work of equal value. Legislation.* The Committee notes that the Government reports on the adoption of Act No. 1496 of 29 December 2011, which guarantees equality of pay and remuneration between men and women. The Government states that the Act establishes wage assessment factors such as the nature of the work to be performed, the conditions for admission to the job and conditions of work. The Act provides that enterprises, both public and private, shall keep a register recording profile tasks assigned and remuneration by sex. The Ministry of Labour shall carry out audits for the purpose of assessing the enterprise's equal wage practices and procedures are established to apply sanctions for breach of wage equality. The Government indicates that there are not as yet any implementing regulations. The Committee notes that the CUT refers to the Act indicating that it was not the subject of consultation with the trade unions and that there is no mechanism for an objective evaluation of jobs. The Committee notes in this connection that although section 7 of Act No. 1496, which amends section 143 of the Labour Code, is entitled "Equal pay for work of equal value", it provides (first paragraph) that "there shall be equal pay for equal work performed in equal posts with equal hours of work and equal conditions of efficiency ...". The Committee notes that this is narrower than the principle of the Convention because it does not capture the concept of "work of equal value": "equal value" goes beyond equal remuneration for "equal", "the same" or "similar" work and encompasses in addition jobs that are of an entirely different nature but which are nevertheless of equal value. The Committee considers that insistence on factors such as "equal conditions of work, skill and output" can be used as a pretext for paying women lower wages than men (see General Survey on the fundamental Conventions, 2012, paragraphs 673 and 677). ***The Committee asks the Government to take the necessary steps to ensure that the principle enshrined in the Convention, namely equal remuneration for work of equal value, is fully reflected in the legislation, and asks it to take the principle into account when the regulations to implement Act No. 1496 are being drafted. The Committee asks the Government to provide information on the progress made in this regard. While noting that according to section 4 of the Act, the Ministry of Labour and the Standing Committee for consultation on wage and labour policies are to determine by agreement the criteria for applying the wage assessment factors to be used by employers in determining remuneration, the Committee asks the***

**Government to provide information on the effect given to section 4 of the Act and on the manner in which this provision promotes objective job evaluation, as envisaged in Article 3 of the Convention.**

*Remuneration.* The Committee notes the Government's statement that according to section 127 of the Substantive Labour Code, as amended by Act No. 50 of 1990, "wages shall consist not only of ordinary remuneration, whether fixed or variable, but of everything the worker receives in cash or kind in direct exchange for service ... allowances, premiums, ordinary bonuses, ... overtime ...". The Government adds that this definition was confirmed by the Constitutional Court in Decision No. C-892 of 2009. The Committee notes that according to the relevant paragraph of that decision, transcribed by the Government, the term "wages" does not cover remuneration for the worker during compulsory rest (holidays and non-work days) or any cash or goods the worker receives in order to perform his or her duties properly such as for travel. **While noting this information, the Committee asks the Government to ensure that remuneration during compulsory rest and any money or goods workers receive in order to perform their duties properly which, according to the Constitutional Court, do not constitute wages, are provided to workers without distinction as to sex, in accordance with the principle of the Convention.**

*Article 2.* The Committee notes that, according to the Government, Decree No. 4463 of 25 November 2011 was adopted to regulate Act No. 1257 setting out rules on awareness raising, prevention and punishment relating to forms of violence and discrimination against women. An objective of the Decree is to define the actions needed to promote social and economic recognition of the work of women and establish mechanisms to make equal remuneration for men and women effective. The Committee notes that according to the CUT, there are no reports on the results of the implementation of these provisions. The Government reports on the drafting of the Ministry of Labour's national plan for employment equity with a differential gender focus for women, which provides for the development of preventive measures and the reduction of unemployment and informal employment among women, and the design of a monitoring system. The plan also provides for strategies to eliminate the pay gap between men and women which include the redistribution of social roles, recognition of the care economy and the incorporation of women in sectors of economic activity which are predominantly male. Furthermore, pursuant to Resolution No. 404 of 22 March 2012, internal working groups were set up in the various territorial departments of the Ministry of Labour to develop strategies for the dissemination of women's rights at work and for the preventive inspection of workplaces with a view to avoiding all violations of equal remuneration. **The Committee asks the Government to provide information on the practical results obtained through the implementation of the national plan for employment equity with a differential gender focus for women in terms of the effect given to the principle of equal remuneration for men and women for work of equal value, laid down in the Convention, and its impact in terms of reducing the gender pay gap. Please provide information on the establishment of the monitoring system envisaged in the plan and on the preventive inspection visits to workplaces carried out with a view to ensuring equal remuneration.**

*Community mothers.* The Committee notes the CUT's observations to the effect that community mothers, whose job is to provide childcare for infants, are not recognized as workers and earn less than the minimum wage. **The Committee asks the Government to send its comments on this subject.**

*Articles 3 and 4.* The Government states that in accordance with section 6 of Act No. 1496, work has been undertaken jointly with the Standing Committee for consultation on wage and labour policies to draft a decree regulating the Act. Work is also under way in conjunction with the United Nations Development Programme (UNDP) to develop an equity seal for the certification of private companies and public institutions that undertake systemic changes and adopt new attitudes with a view to incorporating gender equity. The Committee notes that in its observations the CUT states that the Act was not submitted for consultation and that the Standing Committee met only once – unsuccessfully – to draft the regulatory decree and determine criteria for applying the assessment factors provided for in section 4 of the Act. **The Committee asks the Government to continue to provide information on the implementation of these measures and on the measures adopted under the Agenda for Equality at Work and the Inter-Union Gender Committee, to which the Government referred in its previous report.**

*Statistical information.* The Committee notes the information provided by the Government to the effect that, out of a total of 7,785,503 workers in the public and private sectors, 3,148,805 are women (40 per cent). In the public sector, women account for 51 per cent of the workforce. These statistics show that occupational segregation persists, since women are still poorly represented in sectors where men predominate traditionally, such as construction, electricity, agriculture and mining. The Committee notes that with the implementation of the recently adopted Act No. 1496, the Government plans to develop training programmes for women in the construction sector as a way of combating occupational segregation. The Committee observes, however, that the Government provides no information on the remuneration rates of men and women. It notes that according to the CUT, there was a 17.7 per cent wage gap between men and women in 2011, which rose to 20.2 per cent in the first quarter of 2012. **The Committee asks the Government to provide information on the implementation of the women's training programme in the construction sector, indicating whether it is to be extended to other sectors, and to continue to provide statistical information on the status of men and women in the labour market and on their distribution in the various occupations, jobs and economic sectors. Please also provide statistical information on the remuneration rates of men and women in the public and private sectors disaggregated by occupation and on measures taken to address the gender pay gap.**



*Enforcement.* The Committee notes the information provided by the Government to the effect that four investigations are under way in connection with non-compliance with equal wages under Act No. 1496. **The Committee asks the Government to provide information on the status of these and any other investigations and on any complaints addressed by the labour inspectorate or the judicial authority relevant to the application of the principle of the Convention.**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

The Committee notes the observations of 29 October 2011 of the Confederation of Workers of Colombia (CTC) and the Association of Officials of the Medellín Municipality (ADEM), and the Government's reply thereto. The Committee also notes the observations dated 31 August 2012 of the Single Confederation of Workers of Colombia (CUT) and those of 5 September 2012 from the General Confederation of Labour (CGT). **The Committee requests the Government to provide its observations on these comments.**

*Discrimination on the basis of race, colour and social origin.* In its previous comments, the Committee asked the Government to provide specific information on various measures to promote fundamental rights and to prevent discrimination based on race, colour and social origin, such as the strategy "Towards a national decent work policy in the framework of fundamental rights" and the "Strategy to promote dignified and decent work, from a corporate social responsibility perspective, for vulnerable population groups in Colombia". The Committee notes that the Government indicates that under the Directorate of Fundamental Rights at Work two sub-directorates have been established, one for the protection of labour rights and the other to promote social organization, with a view to intensifying measures to prevent discrimination against Afro-Colombians and indigenous peoples. Two forums have also been held for the benefit of these two groups in order to ascertain the work-related problems they face and to establish the policy guidelines to be followed by the Ministry of Labour. The Government states that it knows of no complaints of discrimination based on social origin. The Committee observes that the Government provides no specific information on the results of the strategies it referred to previously, nor any particulars regarding the new measures or decisions taken to eliminate or prevent discrimination based on race, colour and social origin. **While noting the importance of adopting long-term measures to combat discrimination, the Committee asks the Government to provide specific information on the impact of the measures adopted and the results achieved with a view to addressing discrimination based on race, colour and social origin.**

In its previous observation, the Committee took note of a report produced by the National Council for Economic and Social Policy (CONPES, No. 3660) on the policy to promote equality of opportunity for the black, Afro-Colombian, Raizal and Palenquero communities (2010–14). The Committee notes that according to the CUT, Afro-Colombians have the highest poverty rate (82.12 per cent), have less access to formal employment and are generally concentrated in low-ranking jobs, earning 71 per cent of the pay of a mestizo. The Committee notes that according to the Government, a new CONPES report is being produced with information from all the national entities. The Government refers to a programme set up by the Office of the President to design strategies and action for the development of the Afro-Colombian people, which is divided into five strategic axes: addressing the institutional lag, the creation of human capital, economic development, institutional reinforcement and the Millennium Development Goals. The Committee notes that in the context of these strategies a number of practical measures have already been adopted including the award of collective land titles, measures to set up a Pacific university system, assistance to basic and higher education, improvement of the educational availability, arrangements with employers to conclude agreements with the communities and measures to include these peoples in formal employment. With regard to the specific measures for the education and training of indigenous peoples, the Government states that under the 2010–14 National Development Plan, several measures have been taken, ensuring their autonomy, for the establishment of an indigenous education system, policy guidelines for higher education have been laid down and an intercultural public universities project has been developed. The Committee also notes the measures adopted, including training, to integrate women belonging to these groups in the labour market. **The Committee asks the Government to continue to provide information on the measures taken in the context of CONPES No. 3660, the programme for Afro-Colombians set up by the President's Office and the National Development Plan for Indigenous Peoples 2010–14. It also asks the Government to provide information on the impact of each of the measures adopted in terms of improving access of Afro-Colombians and indigenous peoples to the education system and the labour market, and ensuring their traditional occupations. The Government is also asked to provide information on the measures aimed specifically at women belonging to these groups and the impact of such measures. Please also provide relevant statistical information disaggregated by sex.**

*Discrimination based on sex.* The Committee notes that in its observations the CUT refers in general terms to the persistence of discrimination against women in the labour market, as reported in its previous comments. The Committee notes that the Government refers to the adoption of Act No. 1496 of 2011 to guarantee equality of wages and remuneration for men and women and to establish mechanisms for the elimination of all forms of discrimination. According to the Government, the purpose of the law is to establish mechanisms to bring about real and effective equality in both the public and the private sectors. The Act supplements and amends the Equality Opportunities Act, No. 823, and provides for the development of women's training programmes that are free from stereotyping, for technological and organizational support for small and medium-sized enterprises managed by women or employing a majority of women, and for rural women's access to landownership or tenure. The Government indicates that consultations are under way on

draft implementing regulations for the Act. Furthermore, Ministry of Labour Resolution No. 162 of 2012 establishes a Gender Equity Group with responsibility for ensuring gender mainstreaming in the Ministry. Work is also under way on an equity seal to be used as a means of certifying private companies and public institutions that apply gender equality measures. The Government further indicates that in accordance with the recent regulations on teleworking, enterprises will be encouraged to adopt teleworking contracts for women prior to their maternity leave and during the period of breastfeeding. The Government has also developed a programme for rural women under which measures have been adopted in the areas of production and public and social policy with a view to improving the living conditions of rural women. While noting all these measures, the Committee notes that the Government provides no information on the impact of the measures and programmes it referred to in its previous observation. The Committee stresses the importance of continuity in the activities undertaken and of reporting on their effects and outcomes with a view to determining the extent to which they contribute to the achievement of gender equality, as foreseen in *Article 3(f) of the Convention*. **The Committee requests the Government to provide information on the impact and outcome of the programmes and measures referred to in the present report and previously, including those adopted under Act No. 1496 of 2011 and the programme for rural women. Please provide information on the measures taken to improve women's education and training with a view to improved access to employment and occupation.**

*Sexual harassment.* The Committee notes that according to the Government, Ministry of Labour Resolution No. 2646 of July 2008 requires public and private enterprises to establish a committee on coexistence in the workplace, with responsibility for establishing a confidential internal conciliation procedure to prevent harassment at work. These committees are to be established before 20 October 2012. The Government states that complaints of quid pro quo sexual harassment are filed not with the Ministry of Labour but with the criminal courts, as a mechanism for protecting women against violence. The Government states, however, that a system to follow up cases of sexual harassment at the workplace has been developed consisting of a compendium of information and complaints, which will enable labour inspectors to intervene, together with a protocol for receiving sexual harassment complaints for the purpose of providing legal advice and informing labour inspectors and public prosecutors. The Committee recalls that addressing sexual harassment only through criminal proceedings is not sufficient due to the sensitivity of the issue, the higher burden of proof which is harder to meet and the fact that criminal law does not address the wide spectrum of behaviours constituting sexual harassment in employment and occupation. **The Committee, therefore, requests the Government to provide further information on sexual harassment measures taken by the labour inspectorate and the Ministry of Labour, and on the number of complaints filed and the outcome thereof. The Committee also asks the Government to provide information on the application of section 3 of Act No. 1010 of 2006 on harassment at work (which provides for compensatory measures), and the manner in which adequate protection is secured for victims of harassment. Please indicate whether the abovementioned Act applies to associated work cooperatives.**

## Comoros

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)**

In its previous comments the Committee took note of observations of the Workers' Confederation of Comoros (CTC) received on 1 September 2011, in which the organization reported that the principle of equal remuneration between women and men in the private and parastatal sectors is not being respected because there is no wage scale or indicator to which employers might refer. The Committee invited the Government to send its comments on the matter. The Committee notes that the Government's report has not been received but that a new Labour Code was adopted on 28 June 2012.

*Equal remuneration for work of equal value. Legislation.* In its earlier comments the Committee noted that section 97 of the Labour Code providing for equal wages regardless of the worker's origin, sex, age or status "under equal working conditions, professional qualifications and output" did not give full effect to the Convention. The Committee notes with *interest* that according to section 104 of the new Labour Code "all employers shall provide equal remuneration for the same work or for work of equal value". It further notes that this provision contains a definition of "remuneration" that reflects that of *Article 1(a) of the Convention*. **The Committee asks the Government to provide information on the application of section 104 of the Labour Code in practice. It encourages the Government to publicize the new provisions of the Labour Code and to consider the organization of training to raise awareness among workers and employers and their organizations, labour inspectors, judges and others involved in enforcing the Labour Code concerning the principle of equal remuneration for work of equal value.**

*Collective agreements.* The Committee notes that section 92(7) of the new Labour Code provides that "collective agreements [which may be extended] must include provisions on the ways and means of applying the principle of equal remuneration for men and women for work of equal value". **The Committee asks the Government to provide information on the effect given in practice to section 92(7) of the new Labour Code. It also asks the Government to indicate the measures taken to encourage the social partners to include in collective agreements the principle of equal remuneration for men and women for work of equal value and the ways and means of applying it, and to provide extracts of relevant collective agreements.**

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

## **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2004)**

The Committee notes that the Government's report has not been received but that the new Labour Code was adopted on 28 June 2012.

*Article 1(1)(a) and (b) of the Convention. Definition of discrimination. Additional grounds of discrimination.* The Committee welcomes the fact that section 2 of the Labour Code contains a definition of discrimination in the same terms as *Article 1(1)(a)* of the Convention. The Committee notes with **interest** that section 2 of the new Labour Code adds to the list of prohibited grounds of discrimination set forth in the previous Code, a new ground of discrimination, namely real or perceived state of health, including HIV/AIDS status. The Committee also notes that the new Labour Code contains a chapter on workers living with HIV or AIDS, and in particular, that section 71 prohibits any stigmatization or discrimination on the ground of a worker's real or perceived HIV status on the part of colleagues, trade unions, customers of the enterprise or the employer. **The Committee asks the Government to provide information on steps taken to publicize the provisions of the Labour Code that ban discrimination based on real or perceived state of health, including HIV status, and to raise awareness of this matter among workers and employers and their organizations, labour inspectors, judges and other officials dealing with work-related matters. The Committee also asks the Government to provide information on the application in practice of section 2 of the new Labour Code prohibiting discrimination based on real or perceived state of health including HIV status, and section 71 prohibiting all discrimination based on real or perceived HIV status in practice, indicating any action taken by labour inspectors or any court decisions handed down on such matters.**

*Sexual harassment.* The Committee notes with **interest** that the new Labour Code contains provisions (section 2.2 and 2.3) prohibiting sexual harassment and defining it as "any conduct of a sexual nature the effect of which is to create a working environment that is intimidating, hostile or humiliating for a person" or "any form of verbal, non-verbal or bodily conduct of a sexual nature, through which the perpetrator impairs the dignity of workers at the workplace". The Committee notes that employers are required to adopt measures to prevent sexual harassment and that any discrimination, dismissal or penalties against workers who have suffered or witnessed sexual harassment are prohibited. It also notes that while it is for the persons who deem themselves victims of sexual harassment to establish facts allowing a presumption of such discrimination, it is for the defendant to prove that their decisions were justified by submitting evidence that the decision was free of all harassment. **The Committee requests the Government to take measures to publicize the new provisions of the Labour Code prohibiting sexual harassment, among workers and employers and their organizations, labour inspectors and judges, and to provide information on any measures taken to this end. It asks the Government to provide information on any instances of sexual harassment addressed by the competent authorities, including any relevant administrative or judicial decisions. It also asks the Government to indicate the measures taken by employers, pursuant to section 2.2 of the Labour Code, to prevent any acts of sexual harassment at the workplace. Furthermore, in order to facilitate application of the provisions prohibiting sexual harassment in practice, and in particular the identification of instances of quid pro quo harassment, the Committee requests the Government to envisage the possibility of supplementing the definition of sexual harassment so as to specify that there is harassment when the worker's rejection of the behaviour concerned or the worker's submission to such behaviour, is used explicitly or implicitly to take a decision affecting his or her work.**

Furthermore, since the Government's report has not been received, the Committee is bound to repeat its previous observation, which read as follows:

*Article 2 of the Convention. National policy. Equality of opportunity and treatment of men and women.* In its previous comments, the Committee noted the adoption in June 2008 of the National Policy on Gender Equity and Equality (PNEEG) to ensure equality in employment and occupation. It also noted that the Employers' Organization of Comoros (OPACO), in a communication received on 1 September 2009, indicated that it had not been informed of the elaboration of such a policy and regretted that no measures had been taken to prevent the exclusion of women from certain jobs and occupations. The Committee takes note of the Government's brief comments to the effect that an action plan has been drawn up to introduce measures implementing the PNEEG. The Government also states, in reply to OPOCO's observations, that equality in employment is guaranteed in enterprises and that the promotion of social dialogue is part of the Government's action plan for 2011–15 to ensure effective collaboration with the social partners with a view to achieving perfect social concentration and cohesion. In this respect, workshops designed to strengthen the capacity of employers' and workers' organizations have been held throughout the country. **Taking note of this information, the Committee requests the Government to provide specific information on the awareness-raising and training activities carried out or planned with the social partners, within the framework of the implementation of the PNEEG. Furthermore, the Committee requests the Government to provide detailed information on the action plan implementing the PNEEG and, more specifically, on the measures taken or envisaged to promote equality of opportunity and treatment between men and women in respect of access to education, vocational training, wage and non-wage employment and working conditions (including remuneration, promotion, and security of tenure). The Government is asked to forward a copy of the PNEEG and the action plan.**

*Equality of opportunity and treatment irrespective of race, colour, religion, political opinion, national extraction and social origin.* The Committee notes that the Government's report does not contain any reply to its previous comments in this regard. **The Committee therefore once again requests the Government to indicate the measures taken or envisaged to elaborate and apply a national policy to promote equality of opportunity and treatment in employment and occupation, irrespective of race, colour, religion, political opinion, national extraction and social origin.**

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

## Congo

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1999)***

*Article 1 of the Convention. Protection against discrimination. Legislation.* For many years the Committee has been emphasizing the gaps in the Labour Code and the General Public Service Regulations as regards protection of workers against discrimination, since these texts cover only some of the grounds of discrimination listed in *Article 1(1)(a)* of the Convention and only certain aspects of employment, such as wages and dismissal. The Committee notes the Government's indications that the preliminary draft of a new Act amending and completing certain provisions of the Labour Code, which is currently being prepared, prohibits discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, at all stages of employment and occupation. It further notes that the preliminary draft has been sent to the social partners in order to receive their comments before the meeting of the National Labour Advisory Committee. ***Recalling that, where legal provisions are adopted to give effect to the principle of the Convention, these should cover at least all the grounds of discrimination listed in Article 1(1)(a) of the Convention and be concerned with access to vocational training, access to employment and particular occupations, and also conditions of employment (Article 1(3)), the Committee requests the Government to take the necessary steps to ensure the adoption of the preliminary draft of the new Act amending and completing the Labour Code and the amendment of the General Public Service Regulations in order to ensure full protection against discrimination for workers in the public and private sectors, to supply information on the status of the legislative process to this end and to send a copy of the legislative texts once they have been adopted. The Committee also requests the Government to consider the possibility of requesting technical comments from the ILO on the draft legislation before it is adopted.***

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

## Costa Rica

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)***

The Committee notes the observations sent by the Confederation of Workers Rerum Novarum (CTRN) on 2 September 2012. ***The Committee asks the Government to provide its comments in response.***

*Article 1 of the Convention. Equal remuneration for work of equal value.* For a number of years the Committee has been referring to article 57 of the National Constitution, which establishes that wages “shall always be equal for equal work under identical conditions of efficiency”, and to section 167 of the Labour Code, which provides that “quantity and quality shall be taken into account when determining the level of wages for each type of work. Equal wages shall be paid for equal work performed in the same job and under equal conditions of efficiency and working time ...”. The Committee notes that the Government refers to occupational profiles and indicates that these respect the principle of the Convention since they were drawn up on the basis of objective criteria. The profiles are used to determine minimum wages. The Committee recalls that where the issue of wages is the subject of legislation, the principle established in the Convention must be given full legislative expression. The Committee also recalls that the principle of “work of equal value” includes comparisons between jobs which are of a completely different nature, including work performed under different conditions of efficiency and different working time, but which are nevertheless jobs of equal value. ***The Committee again asks 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 and to provide information on any progress made in this respect.***

*Occupational gender segregation.* The Committee notes the information supplied by the Government in relation to the measures taken in the context of the National Policy on Gender Equality and Equity (PIEG) 2007–17, and in particular the corresponding Plan of Action 2012–14, in relation to the development of enterprises and business ventures for rural women and also technical training in fields where women are under-represented. The Government also emphasizes the high rate of participation of women in occupations that require vocational training and formal education. The Committee further notes the Government's statement that the abovementioned occupational profiles involve grouping various occupations of different types into 23 occupational categories, which are then subdivided into categories of unskilled, semi-skilled and skilled workers, according to their level of training. The profiles constitute a technical tool enabling equal value to be attached to occupations which, despite possessing different features, are similar enough in nature to be grouped into the same occupational category. These are not based on a list of tasks but on the complexity of the work to be done, the experience required, the consequences of error, and on studies and other requirements needed to perform the job. The Government points out that all occupations are open to men and women workers, who receive the same pay, and that any differences in wages relate to different levels of training and education, as well as different levels of responsibility, experience and risks. The Government adds that the officials of the Ministry of Labour and Social Security have the power to define the scope of coverage and to place private sector workers in various wage categories on the basis of labour inspection visits. The Committee observes that the Government refers to statistics which were not attached to its report. The Committee reiterates that the system described by the Government does not appear to take account of the existence of occupational gender segregation, as a result of which certain types of jobs are performed largely or exclusively by women

and others by men as a result of tradition or historical and stereotypical attitudes. Occupational segregation tends to result in “female jobs” being undervalued in comparison with work performed predominantly by men. The concept of work of equal value is therefore essential in tackling such segregation since it provides for a broader scope of comparison between different jobs. *The Committee therefore asks the Government:*

- (i) *to specify what criteria are used to place each occupation in a specific occupational profile;*
- (ii) *to indicate the distribution of men and women in various occupations within each occupational profile, and indicate the manner in which it is ensured that occupations where women predominate are not undervalued;*
- (iii) *to provide examples of cases in which the Ministry of Labour and Social Security has defined coverage and has placed private sector workers in various wage categories.*

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

## Côte d'Ivoire

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1961)

*Equality of opportunity and treatment. Legislation.* For many years the Committee has been asking the Government to take the necessary steps to bring into conformity with the Convention section 14(2) of Act No. 92-570 of 11 September 1992 issuing the general public service regulations, which provide that “specific arrangements may be made, on account of physical fitness requirements or constraints inherent in certain functions ... to reserve access [to the public service] for candidates of one or other sex”. The Committee also recalls that section 14(1) of the Act only prohibits any distinction being made between men and women during recruitment. In its previous comments, the Committee noted the Government’s undertaking to repeal section 14(2) during the review of the general public service regulations. The Committee notes the Government’s indication that a general reform of the public service is under way and that a review of the general regulations is planned in this framework. The Committee also notes the information published on the website of the Ministry of the Public Service and Administrative Reform according to which a workshop was held in October 2012 specifically to review the Act issuing the general public service regulations with a view to identifying “the shortcomings, discrepancies and injustices contained in the current regulations” and “to propose corrective measures”. *The Committee urges the Government to take the necessary steps to repeal section 14(2) of Act No. 92-570 of 11 September 1992 issuing the general public service regulations and trusts that it will take the opportunity provided by the review of the regulations to consider the possibility of including provisions defining and prohibiting any direct or indirect discrimination made on the basis of at least race, colour, sex, religion, political opinion, national extraction or social origin, at all stages of employment. The Committee asks the Government to ensure that equality of opportunity and treatment without any distinction on the basis of the aforementioned reasons is one of the specific objectives of the public service reform. The Government is requested to provide information on the progress of the work on the review of the general public service regulations and to forward a copy of the new regulations as soon as they have been adopted.*

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

## Croatia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1991)

*Articles 2 and 3 of the Convention. Gender equality in employment and occupation.* The Committee recalls section 11 of the Gender Equality Act concerning the adoption of action plans for promoting and ensuring gender equality. The Committee notes the Government’s indication that guidelines for the application of section 11 were sent to all the parties concerned, and that until mid-2010, all ministries, central state offices and many legal entities predominantly owned by the Government had produced their respective action plan proposals.

With regard to women’s entrepreneurship, the Committee notes that strengthening women’s entrepreneurship has been set as one of the key activities and measures in the newly adopted National Policy for Gender Equality 2011–15. The Committee also notes the Government’s indication that the Ministry of Economy, Labour and Entrepreneurship has been conducting a project entitled “Women Entrepreneurship”, and that a total of 1,001 grants were approved amounting to Croatian kuna (HRK) 10,540,000 (approximately US\$1,734,928) in 2010. The Committee also notes the Government’s indication that the measures defined in the National Policy for Gender Equality aim at promoting the employment of women in the information and communications technology sector, which according to the Government will contribute to the elimination of occupational segregation in the area. The Committee further notes the Government’s indication that the National Employment Promotion Plan 2011–12 has as key priorities increasing the level of employability and the rate of labour market participation of women with low or inadequate education, and women belonging to national minority groups. As regards education, the Committee notes the Government’s indication that the rate of girls enrolling in the industrial and artisan school programmes increased in comparison to 2007 and reached 36.3 per cent. The number of

female students in 2009 who enrolled in public colleges and who completed their university education also increased to 56.3 per cent, and 58.6 per cent, respectively. The “Implementation Activities Plan of the Economic Recovery Programme” of the Government also aims at increasing interest of the students in math and natural sciences which have traditionally been considered “male fields”. As regards the public sector, the Committee notes the Government’s indication that a total of 22,980 women and 29,862 men were employed in the Government in 2009, and the share of women rose to 43.49 per cent in 2009; the rate of women in state administration’s managerial positions increased to 3.2 per cent in 2009. ***The Committee asks the Government to continue to provide information on the practical application of section 11 of the Gender Equality Act, as well as on the measures taken to promote women’s access to a wider range of jobs, including posts of responsibility and management positions, both in the private and the public sectors, and to provide them with a wider choice of educational and vocational opportunities, and their impact. The Committee also asks 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 2009 and 2010, pursuant to the National Programme for the Roma and the Action Plan for the Decade of Roma Inclusion, 2005–15, relating to the employment and training of persons belonging to the Roma national minority. The Committee recalls the Government’s indication that the main obstacle for the members of the Roma to access employment is their low level of education. The Committee notes the Government’s indication in this respect that 824 Roma children engaged in pre-school education in the years 2009–10, and 4,435 Roma children were engaged in primary education at the beginning of the school year 2010–11, both of which showed an increasing trend compared to previous years. A database on the integration of members of the Roma national minority in the education system has also been developed. In addition, the Ministry of Science, Education and Sport has encouraged the involvement of Roma children into pre-school education, including through sharing of costs paid by parents. The Government also indicates that the adoption of the National Curriculum for Pre-School Education and General Mandatory and Secondary Education in July 2010, in combination with the external evaluation of Roma educational results, would make it possible to adequately assess problems and improve the education of the Roma. With regard to Roma women, the Committee notes the Government’s indication that a research study entitled “The lives of Roma women in Croatia with focus on the approach to education” was conducted, which aimed at raising awareness in the Roma community and in society as a whole concerning the problems Roma women were facing with regard to access to education.

With regard to the employment service, the Government indicates that 4,553 members of the Roma community were registered in 2010, although the Government also indicates that due to a tendency of the Roma not to disclose their Roma identities, and due to the fact that the employment service does not collect unemployment rates disaggregated by ethnicity, there is a problem in establishing a database of unemployed Roma. The Government further indicates that the Roma have been provided with assistance in drafting their job profiles and developing individual plans on job search, and that the employment of the Roma for a period of 24 months is subsidized. ***The Committee asks the Government to continue to provide information on the measures taken to ensure equal access to education, including pre-school education, for Roma children, without discrimination. The Committee also 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 impact of the assistance concerning job search provided for the Roma by the employment service.***

*Article 3(d). Access of minorities to employment under the control of a national authority.* The Committee notes the adoption of the Action Plan for the Implementation of the Constitutional Law on the Rights of National Minorities for the period from 2011–13, which includes the adoption of a long-term civil service employment plan with the goal of 5.5 per cent share of persons belonging to national minorities in the total number of civil servants. The Government has adopted the Civil Servants Employment Plan for persons belonging to national minorities for the period from 2011–14. The Committee also notes the Government’s indication that persons belonging to national minorities are given priority in employment in state administration. In regional and local self-government units, only municipalities and cities where the rate of national minorities exceeds 15 per cent of the total population, and counties where the rate of national minorities exceeds 5 per cent, are obliged by law to adopt civil service recruitment plans. The Committee further notes the Government’s indication that a study on the share of national minorities in the public sector was conducted in the year 2011, which showed that no under-representation of national minorities was observed in five counties covered by the study, namely, Osijek-Baranja, Vukovar-Srijem, Bjelovar-Bilogora, Sisak-Moslavina and Istria. ***The Committee asks the Government to continue to provide 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.

## **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1991)**

*Article 3 of the Convention. National policy.* The Committee recalls the National Policy for the Promotion of Gender Equality (2006–10). The Committee notes with *interest* the legislative measures to give effect to the provisions of the Convention, in particular the adoption of the Anti-discrimination Act, 2008 (*Official Gazette* No. 85/08), and the Maternity and Parental Benefits Act, 2008, as last amended in 2011 (*Official Gazette* Nos 85/08, 10/08 and 34/11), as well as the establishment of the Maternity and Parental Benefits Act Implementation Monitoring Commission. The Committee notes that section 1(1) of the Anti-discrimination Act provides for protection against discrimination on various grounds, including gender and marital or family status. The Office of the Ombudperson has been a central equality body since 2009 and according to its report, three cases concerned marital or family status among a total of 172 cases of alleged discrimination filed with the Office. **The Committee asks the Government to provide information on the practical application of the Maternity and Parental Benefits Act, 2008 and the results achieved under the National Policy for the Promotion of Gender Equality (2006–10), in order to promote equality of treatment and opportunity of workers with family responsibilities. Please also provide information on the functions of the Maternity and Parental Benefits Act Implementation Monitoring Commission. The Committee further requests the Government to provide information on any cases of discrimination related to family responsibilities dealt with by the Office of the Ombudperson or the courts.**

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

## **Cuba**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1954)**

*Article 1 of the Convention. Work of equal value.* For a number of years, the Committee has been referring to the fact that section 99 of the 1984 Labour Code provides that workers shall receive equal pay for equal work without distinction whatsoever, including on the basis of sex, and that it is narrower than the principle established in the Convention. The Committee notes that the Government repeats that the established criteria are still in force, that the legislation covers gender equality and that the provisions of the Convention are applied in practice. The Government also states that in order to promote the principle of the Convention there are education and training programmes for judges, lawyers and law enforcement personnel. Furthermore, the National Union of Jurists of Cuba and the Federation of Cuban Women signed a joint work agreement for the provision of courses for legal practitioners and members of multidisciplinary teams; for the approval of a postgraduate course on gender and the law and for the inclusion of a module on the subject in the Gender Studies Master's Degree of the Women's Chair of the University of Havana. While noting this information, the Committee nevertheless points out in this connection that the concept of "work of equal value" is at the core of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of gender equality. Legislation that contains narrower provisions hinders progress in eradicating gender-based pay discrimination (see General Survey on the fundamental Conventions concerning rights at work, 2012, paragraphs 673 and 679). **The Committee asks the Government to give full legislative expression to the principle of equal remuneration for work of equal value so that it covers not only situations where men and women perform the same work but also encompasses work that is of an entirely different nature, which is nevertheless of equal value. Please continue to provide information on the measures adopted to raise awareness of the principle of 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: 1965)**

The Committee notes the observations by the Coalition of Independent Trade Unions of Cuba (CSIC), received on 10 September 2012, and the Government's response.

*Discrimination on the basis of political opinion.* The Committee has been referring for a number of years to the need to guarantee protection for individuals in the context of employment and occupation against discrimination on the basis of political opinion and has been asking the Government to provide information on any cases involving individuals detained, prosecuted or accused of other offences who may have claimed to be journalists. In its most recent comments the Committee asked the Government to provide information on the situation and conditions of work of independent journalists, and particularly on the manner in which it is ensured that journalists and all other workers who express political opinions contrary to the Government enjoy protection from discrimination on this basis. The Committee notes the Government's denial that any citizens have been detained or prosecuted for working as journalists, and states that the persons referred to by the Committee are continuing to destroy the constitutional order and have no employment relationship in journalism in the country and cannot be recognized as journalists. For this reason the Government indicates that it is unable to supply information on the situation and conditions of work of these persons. It also points out that nobody has been penalized for exercising freedom of expression and opinion and that the exercise of a profession does not constitute an offence which can incur criminal penalties. The Committee notes that the Government does not indicate whether the persons referred to in its report have been detained, prosecuted or accused of other offences, nor does it state whether these persons have claimed to be journalists. The Committee recalls that the protection of individuals in the

context of employment and occupation against discrimination on the basis of political opinion implies recognition of this protection in relation to activities expressing or demonstrating opposition to the established political principles, even if certain doctrines are aimed at fundamental changes in the institutions of the State (see General Survey on equality in employment and occupation, 1988, paragraph 57, and the General Survey on Fundamental Conventions, 2012, paragraph 805). *The Committee therefore requests the Government once again to clarify whether there are persons who have been detained, prosecuted or accused of other offences who have claimed to be journalists and, if so, to indicate the numbers concerned, the charges laid, the current situation as regards any legal proceedings, and how many have been released. The Committee also requests the Government to take the necessary steps to ensure that independent journalists, and all other workers who express political opinions contrary to the Government enjoy protection against discrimination on this basis.*

The Committee notes that the observations of the CSIC concern discrimination on the basis of religion and political opinion which affects workers and those seeking admission to universities and technical training institutes in the context of a labour market monopolized by the State by means of government job placement agencies. Such discrimination is effected by means of detailed employment files which are held for life and contain political and religious information on workers and their families. The Committee notes that the Government indicates in this regard that in Cuba the State is not the employer and that pursuant to section 7 of the Labour Code the following entities provide employment: the agencies of the Central State Administration, state bodies and their administrative offices; public enterprises and the entities dependent on political, social and mass organizations; farming cooperatives; and private sector enterprises and businesses with respect to private employees. The Government affirms that no one is being discriminated against on the basis of political opinion and refers to the constitutional and legal provisions establishing fundamental rights, prohibiting discrimination and providing for the right to education. The Government also states that an employee's employment file is not being used for discriminatory purposes and does not contain information on the political opinion or the religious convictions of the worker and the members of his or her family. The file is used only for purposes of registration and consultation concerning employment, promotion, training and performance evaluation. *Referring to the preceding paragraph, the Committee requests the Government to ensure that workers, university students and vocational training students are not being discriminated against on the basis of their political opinion or religion and that no information regarding the political opinion or the religion of the workers is registered in the employment file for purposes of using it against them.*

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

## Czech Republic

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** *(ratification: 1993)*

#### ***Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 99th Session, June 2010)***

In its previous comments, the Committee noted 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, which addressed the following issues: (1) the anti-discrimination legislation; (2) the outstanding issues with regard to the follow-up to the representations under article 24 of the ILO Constitution (November 1991 and June 1994) regarding Act No. 451 of 1991 (the Screening Act); and (3) the situation of the Roma in employment and occupation. The Committee also noted that an ILO mission has taken place from 26–29 April 2011 and recommended inter alia that the tripartite constituents consider taking advantage of the envisaged revision of the Labour Code to include the list of prohibited grounds of discrimination currently in the Employment Act so as to ensure legal clarity and certainty concerning protection against discrimination in all areas of employment and occupation. The Committee also notes the observations from the Czech-Moravian Confederation of Trade Unions (CM KOS) attached to the Government's report.

*The anti-discrimination legislation.* The Committee recalls that the Labour Code of 2006 (Act No. 262/2006) prohibits all forms of discrimination in labour relations but does not specify any prohibited grounds, unlike the previous Labour Code which prohibited discrimination on the basis of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social background, family background, language, health condition, age, religion or confession, property, marital or family status, family responsibilities, political or other conviction, membership of or activity in political parties or movements, trade union or employers' organizations. However, the Anti-Discrimination Act (No. 198/2009 Coll.) prohibits direct and indirect discrimination based on race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or worldview. In addition, the Employment Act (No. 435/2004) prohibited any form of direct or indirect discrimination of persons exercising their right to employment on the same grounds as the former Labour Code, before its amendment by Act No. 367/2011. In this respect, the Committee notes that, according to the Government, this amendment replaced the list of prohibited grounds of discrimination by an explicit reference to the Anti-Discrimination Act. It also notes the Government's indication that section 16 of the Labour Code was amended by Act No. 365/2011 Coll. which supplemented the provisions on equal treatment and prohibition of discrimination also with an explicit reference to the



Anti-Discrimination Act. The Committee notes that the Government reiterates its position that the Anti-Discrimination Act has to be read in conjunction with the Charter of Fundamental Rights and Freedoms and international agreements which are directly applicable in the country according to the Constitution. It also notes the Government's indication that the grounds of family responsibilities, marital status, pregnancy and parenthood may be covered by the ground of sex in the Anti-Discrimination Act, and that employees' representatives are protected against discrimination by section 276 of the Labour Code. The Committee notes that as a result of the new legislative framework, workers are explicitly protected against discrimination only on the basis of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or opinions, as provided by the Anti-Discrimination Act to which both the Labour Code of 2006 and the Employment Act now refer, thereby omitting the grounds of political conviction and membership or activity in political parties, trade unions or employers' organizations which were previously expressly covered by the former Labour Code and the Employment Act. The Committee notes that the CM KOS indicates that it maintains its long standing observations regarding the limitation of the protection of workers against discrimination. The CM KOS indicates that this protection was further limited due to the amendment of the Employment Act in 2011 that removed the list of prohibited grounds of discrimination from its provisions and therefore the organization considers that the current legislation and practice are not in compliance with the Convention.

The Committee notes the Government's indication that the State Labour Inspection Office issued leaflets for the public dedicated to the issue of discrimination. It notes however that these leaflets only mention the grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or worldview. The Committee notes the Government's indication that further to the recommendations of the ILO mission, discussions are currently being held between the Ministry of Labour and Social Affairs, the Government Commissioner for Human Rights and the Ombudsperson to determine the appropriate means to ensure the enforceability and legal clarity and certainty concerning the right to non-discrimination, including with regard to legal procedures available to workers.

*Noting the recent legislative developments, the Committee asks the Government to take the necessary measures to ensure the protection of workers against discrimination in training, recruitment, terms and conditions of employment, on the basis of all the grounds that were previously covered by the labour legislation. It also asks the Government to monitor closely the application of the Anti-Discrimination Act and the Charter of Fundamental Rights and Freedoms specifically in the field of employment and occupation as well as the application of the Labour Code and the Employment Act in practice, particularly with regard to the possibility for workers to assert their right to non-discrimination and to obtain compensation, and to ensure that they provide adequate protection against discrimination based on at least all the grounds enumerated in Article 1(1)(a) of the Convention. The Committee asks the Government to take the necessary measures to ensure that the material designed to foster awareness of the legal provisions on discrimination among workers, employers and their organizations, as well as labour inspectors, judges and other public officials dealing with non-discrimination and equality, indicates clearly the grounds of discrimination that are prohibited under the legislation, including those covered by the Charter of Fundamental Rights and Freedoms, and provide details on the procedure to follow. In this regard please also provide information on the number and nature of any administrative or judicial decisions applying and interpreting the legal provisions on discrimination in the field of employment and occupation, including the remedies provided and the sanctions imposed.*

*Discrimination on the basis of political opinion. The Screening Act.* In its previous comments, the Committee noted that the Conference Committee has strongly urged the Government to amend or repeal the Screening Act without further delay in so far as it violated the principle of non-discrimination on the basis of political opinion. The Committee also noted that detailed information was provided to the ILO mission to clarify the scope of application of the Screening Act, according to which the Act applies to limited categories of persons occupying managerial positions in the public service and state enterprises, and that work was under way to adopt a new Act on Civil Service. The Committee understands from the Government's report that in the draft Act on Civil Service which is still under preparation, there remains a reference to the current provisions of the Screening Act as one of the "additional prerequisites" for a management position in the civil service, a high level position or a position of head of office of a regional self-government unit. The Government indicates that the Screening Act will not apply to "other employees", as defined by the draft Act on Civil Service and excluded from its scope, performing auxiliary or manual work at public authorities or to employees supervising these workers. Further to the adoption of the Act on Civil Service, the list of persons subject to the Screening Act will be amended, using the same terminology. *Recalling that political opinion may be taken into account as inherent requirements only for certain posts involving special responsibilities directly concerned with developing government policy, the Committee requests the Government to provide information on the measures taken to clearly specify and define the functions in respect of which screening would be required in the Act on Civil Service and provide a copy of this Act once it has been adopted as well as a copy of the Screening Act once it has been amended. Noting the information provided in the Government's report in this respect, the Committee requests the Government to continue to provide information on the application of the Screening Act, indicating specifically the positions for which a screening certificate was requested and issued, and the responsibilities directly concerned with developing government policy. Please provide statistical information on the number of certificates issued and the appeals lodged against a positive certificate.*

*The situation of the Roma in employment and occupation.* The Committee noted in its previous comments that the Conference Committee remained concerned that the measures taken aimed at the social inclusion of the Roma had not yet led to verifiable improvements and urged the Government to take measures to develop improved means to monitor the situation of the Roma, including through the collection and analysis of appropriate data. The Committee welcomes the detailed statistics provided by the Government on the estimated numbers of members of the Roma community, disaggregated by region and sex. The Committee also notes the results of the 2011 national census according to which only 5,199 persons declared themselves as Roma whereas in 2010 the number of people in the Roma community was estimated at 183,000. The Committee notes that according to the statistics provided the estimated number of people from the Roma community registered by the Labour Office is quite low in comparison to the total Roma population (38,456 including 18,146 women). The Committee notes the detailed information provided by the Government regarding numerous projects and programmes of the Active Employment Policy and the reform of public employment services. The Committee notes with *interest* the approval of a comprehensive Strategy for Combating social exclusion for the period 2011–15 in September 2011, to support the social inclusion of people in “socially excluded localities” in which mainly members of the Roma community live. According to the strategy, approximately 80,000 persons are concerned by social exclusion in the country, 70,000 of which are from the Roma community. This Plan of Action which was prepared by the Agency for Social Inclusion, includes 77 measures in the fields of education, employment, housing, social services, family policy, healthcare, security and regional development, and will be implemented by the Government Commissioner for Human Rights. With regard to education, the Committee notes that the measures envisaged, including financial measures, aim at reforming the current educational system to end segregation and transform the system of schools established for pupils with mild mental disabilities. They also include measures to end discriminatory criteria for admission of children into public kindergartens which reduced the availability of such facilities for children from socially disadvantaged families, and measures to support inclusive education. The Committee also notes that 65 per cent of the persons from socially excluded localities receive social benefits and 75 per cent of them are non-active or unemployed and 11 per cent have occasional employment. The employment measures encompass the development of specific mechanisms to find employment, the implementation of a gradual employment scheme from the public service to the free labour market, the development of local employment networks and the implementation of tools for flexible employment and incentives for employers. ***Welcoming the numerous measures envisaged in the Comprehensive Strategy for Combating Social Exclusion (2011–15) to address comprehensively social exclusion and school segregation, which affects disproportionately the members of the Roma community, the Committee requests the Government to provide information on its implementation of the measures with regard to education, training, employment and occupation, in particular with regard to Roma girls and women, and the results thereof. In this regard, it requests the Government to continue to assess the impact of the measures taken and to ensure that any progress made in the education and employment situation of the Roma population is not reversed by the economic downturn or the lack of appropriate funding, including with respect to the activities of the Government Commissioner for Human Rights and the Agency for Social Inclusion. The Committee requests the Government to take appropriate measures to address stereotypes and prejudices regarding the capabilities and preferences of the Roma and to promote respect and tolerance between all sections of the population. Please also provide information on the implementation and results of the “Ethnic Friendly Employer” scheme.***

The Committee is also 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 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 and application of the principle to all aspects of remuneration.* The Committee recalls that 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, 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. It recalls its previous concerns that the Labour Code currently provides for equality only in respect of the salary (section 86) and accommodation and accommodation allowances (section 138), and that 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. In this context, the Committee had drawn the Government’s attention to the Government’s obligation under the Convention to ensure 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)*, and that 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 notes the Government’s statement that it has taken due note of the Committee’s comments and will take them into consideration in the context of a future revision of the Labour Code. The Government also envisages defining a wage policy which takes account of all the elements of remuneration. ***Recalling its 2006 observation which calls on States which have not yet done so to ensure that their legislation fully reflects the principle of the Convention, the Committee once again 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. It hopes that this will be done in the very near future. The Committee also asks the Government to provide further details of the wage policy, which it hopes will cover all elements of remuneration.*

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:

The Committee notes from the third joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo (A/HRC/16/68, 9 March 2011) that the human rights situation in the country remains of serious concern, especially in the east of the country. The Committee notes particularly the concerns expressed with respect to sexual violence against women, including systematic and mass rape, and related impunity, as highlighted in the most recent report submitted by the United Nations High Commissioner for Human Rights (A/HRC/16/27, 10 January 2011). The Committee notes that the recommendations to the Government in the report include repealing all provisions of law that discriminate against women, denouncing publically and unequivocally all forms of violence against women, and ensuring that the judicial system brings the perpetrators of such violations to justice promptly and impartially. The Committee notes that according to the report, sexual violence remains widespread despite the Government's efforts to stop it and the phenomenon is rampant throughout the country and affects thousands of women. The recent mass rapes committed in Walikale territory exemplify this scourge. The Committee further notes that the UN High Commissioner for Human Rights considers that the situation of women will remain precarious as long as the State fails to tackle in earnest the social roots of sexual violence, i.e. women's inferior social, economic and political status in Congolese society. The Committee recalls that the objective of the Convention, notably equality of opportunity between men and women in employment and occupation cannot be achieved in a general context of serious human rights violations and inequality in society. ***Considering the serious concerns raised regarding the human rights situation and its particular effects on women due to their inferior economic and social status in society, the Committee urges the Government to take all the necessary measures to address the inferior position of women in society reflected in sexual violence against women and discriminatory laws, which it considers has a serious impact on the application of the principles of the Convention. In this context, the Committee also urges the Government to create all the necessary conditions to give effect to the provisions of the Convention.***

The Committee notes the Government's very brief report in reply to its previous observation, in which it raised issues relating to the legislative prohibition of discrimination in employment and occupation, discrimination based on sex, and discrimination based on race or ethnic origin.

***Articles 1 and 2 of the Convention. Prohibition of discrimination in employment and occupation.*** The Committee recalls that, 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, the Labour Code contains no provisions prohibiting and defining discrimination in employment and occupation. Act No. 81/003 of 17 July 1981 on the conditions of service of career members of the state public service also lacks anti-discrimination provisions. The Committee notes that the Government repeats its statement that it will include provisions prohibiting and defining indirect and direct discrimination in employment and occupation, including in respect of recruitment, once it has been determined when the revision of the Labour Code will take place. ***The Committee urges the Government to make progress in this regard and asks the Government to indicate all steps with a view to including provisions in the Labour Code and Act No. 81/003 defining and prohibiting direct and indirect discrimination, in all aspects of employment and occupation, on at least all the grounds enumerated in the Convention.***

***Discrimination based on sex.*** The Committee previously noted that certain provisions of the Family Code, of Act No. 81/003 of 17 July 1981, on the conditions of service of career members of the state public services, and of the Legislative Ordinance No. 88-056 of 29 September 1988, respecting the activities of magistrates, constituted discrimination on grounds of sex in employment and occupation contrary to the Convention. The Committee recalls that sections 448 and 497 of Act No. 87/010 of 1 August 1987, enacting the Family Code, appear 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. In relation to jobs in the public service, section 8 of Act No. 81/003 of 17 July 1981 and section 1(7) of Legislative Ordinance No. 88-056 of 29 September 1988 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 notes the Government's statement that the Statute of magistrates will be communicated in its next report and that the Statute of the public administration has not yet been promulgated. ***The Committee having previously noted that the modification of the abovementioned texts was under way, requests the Government to make progress in bringing the abovementioned provisions, including those in the Family Code, into conformity with the Convention and to provide the amended texts, as soon as possible.***

***Discrimination based on race or ethnic origin.*** The Committee notes that the Government's report does not reply to the Committee's previous comments regarding the socio-economic situation of the Batwa, and discrimination faced by the Batwa in employment and occupation. The Committee had noted in this context the concluding observations of the United Nations Committee on the Elimination of Racial Discrimination, of 17 August 2007, expressing 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. CERD also expressed concern that the rights of these groups 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 once again 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. The Government is also requested to indicate the measures taken to ensure that these indigenous groups enjoy their right to equality 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 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(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 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)**

The Committee notes the observations of the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD), received on 8 October 2012. *The Committee asks the Government to send its comments in this respect.*

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislation.* In its previous comments the Committee referred to the need to amend section 194 of the Labour Code and section 3(4) of Act No. 41-08 of 2008, which provide for "equal wages for equal work, in terms of capacity, performance and seniority, irrespective of the person performing the work". It also noted that article 62(9) *in fine* of the new Constitution – adopted on 26 January 2010 – lays down that "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 or seniority". The Committee notes the Government's statement that in the context of the discussions on the amendment of the Labour Code it is proposed to amend section 194 to align it with the principle of the Convention. As regards Act No. 41-08, the Ministry of Public Administration will convey the Committee's observations to the legislators with a view to including a provision towards this end in the Bill issuing wage regulations which is before the Justice Commission of the Chamber of Deputies. The Committee recalls that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. This concept includes equal remuneration for "equal", "the same" or "similar" work, but it also encompasses jobs which are of an entirely different nature but which are nevertheless of equal value (see General Survey on the fundamental Conventions, 2012, paragraph 673). The Committee also considers that defining the concept of "work of equal value" in terms of "identical conditions of capacity, performance or seniority" restricts the concept laid down in the Convention, since it is also necessary to compare jobs which are performed under different conditions but which are nevertheless of equal value. *The Committee asks the Government to continue to take the necessary steps to ensure that the amendment to section 194 fully reflects the principle of the Convention and is adopted as soon as possible by the National Congress. The Committee asks the Government to send a copy of the amended legislation once it has been adopted. The Committee also asks the Government to provide information on the measures taken with a view to fully harmonizing section 3(4) of Act No. 41-08 with the Convention and to indicate whether the Act issuing wage regulations has been adopted.*

*Gender pay gap and occupational segregation.* In its previous observation the Committee noted the observations made by the CNUS, CASC and CNTD dated 31 August 2011, according to which the pay differential between men and women in 2011 was 16.6 per cent despite the fact that the percentage of women with higher education qualifications is greater than that of men. The Committee notes the Government's indication that on 12 January 2012 the Act confirming the National Development Strategy 2010–30 was adopted, establishing that all public plans, programmes, projects and policies must incorporate gender mainstreaming in the various spheres of action, in order to identify situations of gender discrimination and to adopt actions contributing to gender equity. As regards specific aspects of the remuneration gap, the Government indicates that the current progressive legal framework has made it possible to reduce differences in rates of pay. The Government adds that although the National Labour Survey (ENFT) indicates that there is a greater proportion of men participating in the labour market and that a greater proportion of wages are therefore paid to men, the difference in

participation and remuneration between men and women has been reduced in recent years, and in the public sector technical studies are being conducted to determine what it would cost to reduce the current pay gap. The Committee also notes the Government's indication in its report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), that the implementation of the electronic system for the registration of enterprises and workers, designed to obtain information on pay disaggregated by sex and occupation, will enable public policies to be formulated with the objective of eliminating and preventing any gender pay differentials. The Committee also notes that the National Plan on Gender Equity 2006–16 (PLANEG 2006–16) recognizes the existence of a gender pay gap and the need to draw up legislation to tackle the issue. The Committee also observes that, according to the statistics supplied by the Government, there is marked occupational segregation, with women significantly outnumbered by men in traditionally “male” jobs (agriculture and stockbreeding, mining, construction and transport), whereas the unemployment rate for women is twice as high as the rate for men. The Committee recalls that pay differentials remain one of the most persistent forms of inequality between women and men. The continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations, take more proactive measures to raise awareness, make assessments and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value. Collecting, analysing and disseminating this information is important in identifying and addressing inequality in remuneration (see General Survey, 2012, paragraphs 668 and 669). ***The Committee asks the Government to take specific measures to tackle the pronounced gender pay gap and to send information in this regard, including on the measures taken in the context of PLANEG 2006–16 and the National Development Strategy 2010–30. The Government is also requested to indicate whether the electronic system for the registration of enterprises and workers has been implemented. Further, recalling that inequalities in wages can originate from the segregation of men and women in certain sectors and occupations, the Committee asks the Government to send information on the measures taken or contemplated to improve women's access to a greater variety of employment opportunities at all levels.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

The Committee notes the observations of the Autonomous Confederation of Workers' Unions (CASC) and the Employers' Confederation of the Dominican Republic (COPARDOM), which were attached to the Government's report and refer to matters pending. ***The Committee also notes the new observations submitted by the CASC, the National Trade Union Confederation (CNUS) and the National Confederation of Dominican Workers (CNTD), and requests the Government to send its observations thereon.***

***Discrimination based on colour, race and national extraction.*** The Committee has for a number of years been referring to discrimination against Haitians and dark-skinned Dominicans and recalls that in 2008, the Conference Committee called on the Government to address the intersection between migration and discrimination with a view to ensuring that migration laws and policies did not result in discrimination based on race, colour or national extraction. The Committee also recalls that in its previous observation it took note of observations by the CNUS, the CASC and the CNTD, asserting that foreign workers, mainly Haitians, were paid lower wages than national workers in the construction sector. The Committee notes with ***interest*** the adoption on 19 October 2011 of Regulation No. 631-11 to the General Migration Act, section 32 of which establishes that the same fundamental rights applying to nationals are guaranteed to resident foreigners. Section 35(III) provides that the Ministry of Labour must ensure that the equality guaranteed in the Constitution is applied to the conditions of work of immigrants and that the labour law is enforced. The Committee notes that the Government indicates that as a result of the application of the Regulation, unregistered immigrants will be given legal status and be issued with documents, and will be authorized to work and to avail themselves of the national social security system on an equal footing with Dominican workers. The Government adds that the Legal Assistance Department will also afford help to foreign workers. The Committee further notes that, according to the Government, the Dominican Labour Observatory (OMLAD) submitted a study in February 2012 on the participation of Haitian immigrants in the Dominican labour market, specifically in the construction and banana sectors. The Committee notes that the study highlights a marked wage gap between immigrant and Dominican workers in these sectors and the need to ensure that the fundamental rights of immigrant workers are respected, that the supervisory mechanisms are reinforced and that access to justice is guaranteed. Furthermore, a labour migration unit has been established in the Ministry of Labour (Resolution No. 14/2012), the aim of which is to oversee compliance with the labour regulations applying to foreigners, disseminate information on the rights of foreigners and ensure respect for migrants' rights through inspection procedures. The Committee also notes that a committee has been established to promote equal opportunities and prevent discrimination at work within the Ministry of Labour. While taking due note of all the measures adopted by the Government to address the issue of discrimination against Haitians and dark-skinned Dominicans, the Committee recalls that it has been dealing with these concerns for a number of years and highlights the need to complement the measures adopted with practical implementation. ***The Committee accordingly asks the Government to take the necessary measures to ensure that the Regulation to the General Migration Act, No. 631-11 of 2011, is fully implemented to ensure there is no discrimination against migrant workers based on any of the grounds enumerated in the Convention and to provide specific information in this regard. Furthermore, it hopes that the measures adopted by the labour migration unit and the committee to promote equal opportunities and prevent discrimination at work will enable the Convention to be fully***

*applied and will ensure that workers of Haitian origin and dark-skinned Dominicans will not suffer discrimination based on race, colour or national extraction, including irregular workers, and asks the Government to provide information in this regard, and on the following:*

- (i) the specific measures adopted pursuant to the OMLAD study on the participation of Haitian immigrants in the construction and banana sectors;*
- (ii) complaints filed with the administrative and judicial authorities for discrimination based on race, colour or national extraction, and on the processing of these complaints; and*
- (iii) whether a tripartite committee has been established to follow up the recommendations of the Special Rapporteur and the independent expert referred to in earlier observations; and on progress made in implementing those recommendations.*

*Discrimination based on sex.* The Committee has for a number of years been raising concerns about the persistence of instances of discrimination based on sex, particularly mandatory pregnancy testing, sexual harassment and the failure to apply the legislation in force effectively, especially in export processing zones. The Government states that judges and labour inspectors receive ongoing training on all forms of discrimination, including discrimination based on sex. It lists the measures taken to provide training and awareness raising for workers, employers and public servants about sexual harassment and pregnancy testing. The Committee notes, however, that the Government provides no information on progress made in adopting the amendments to the Labour Code that concern sexual harassment and pregnancy testing, or on the measures to support and protect victims of sexual harassment and mandatory pregnancy testing to which the Committee referred in its previous observation. It notes that the Government provides no information on the scope of section 47(9) of the Labour Code, which prohibits employers from “carrying out any action against a worker which may be regarded as sexual harassment, or supporting or failing to intervene in any such action on the part of the employer representatives”. The Government indicates that the Penal Code punishes sexual harassment by a one-year prison term and a fine ranging from 5,000 to 10,000 pesos. The Committee recalls that sexual harassment at work and pregnancy testing as a requirement for entering and remaining in employment constitute serious violations of the Convention and must be adequately and effectively addressed in legislation and practice with a view to their elimination and prevention. Furthermore, the Committee recalls that addressing sexual harassment only through criminal proceedings is not sufficient due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses (which is often the case), and the fact that criminal law generally focuses on sexual assault or “immoral acts” and not the full range of behaviour that constitutes sexual harassment in employment and occupation (see General Survey on fundamental Conventions, 2012, paragraph 792). *The Committee again urges the Government to take specific measures, including through the Committee to promote equal opportunities and prevent such discrimination at work, to ensure that the legislation in force is effectively applied, and to take proactive measures to prevent, investigate and punish sexual harassment and pregnancy testing as a requirement for obtaining and keeping a job, and to provide adequate protection for the victims. The Committee also requests the Government as follows:*

- (i) to take the necessary measures to increase the penalties for such acts and to ensure that the mechanisms for settling disputes regarding discrimination in employment and occupation are efficient and available in practice to all workers, including those in export processing zones;*
- (ii) to provide information on the scope of section 47(9) of the Labour Code and on the status of the proposed amendments to the Labour Code dealing with sexual harassment and pregnancy testing, and expresses the firm hope that the amendments will include a provision expressly prohibiting both quid pro quo and hostile environment sexual harassment and will establish appropriate penalties; and*
- (iii) to provide detailed information on training for judges, labour inspectors and the social partners on sexual harassment and pregnancy testing, including representative samples of the training material used.*

*Real or perceived HIV status.* With regard to mandatory testing to establish HIV status, the Committee notes with *interest* the adoption of Act No. 135-11 of 7 June 2011, section 6 of which prohibits HIV testing as a requirement for obtaining or keeping a job or obtaining a promotion. Furthermore, under sections 8 and 9, any dismissal on the ground of HIV status is automatically null and void. Under the Act, mandatory testing is subject to a fine ranging from 25 to 50 times the minimum wage in the private sector, and in the public sector gives rise to civil liability. The Committee also notes that, according to the Government, the Technical Unit for Comprehensive Care (UTELAIN) has carried out a number of training projects that include training on the HIV and AIDS Recommendation, 2010 (No. 200) for labour inspectors, lawyers and the social partners. Furthermore, an agreement has been signed for inter-institutional cooperation between the Ministry of Labour, the National Council on HIV and AIDS (CONAVIHSIDA), the National Council for Export Processing Zones and the Dominican Association of Export Processing Zones, with a view to devising policies and establishing certification for enterprises in export processing zones. The UTELAIN has signed 169 agreements with enterprises on the implementation of anti-discriminatory policies relating to HIV and AIDS. *The Committee requests the Government to continue to send information on the measures adopted to prevent and eradicate discrimination based on HIV and AIDS. It requests the Government to provide information on the number and nature of complaints filed with the administrative and judicial authorities for discrimination based on HIV and AIDS, including for mandatory HIV and AIDS testing, and on the decisions handed down.*

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

## Ecuador

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (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 adoption of the new Constitution in September 2008 following its approval by referendum. The Committee notes with interest that article 11(2) of the Constitution includes new grounds on which discrimination is prohibited, including migration and being HIV positive. It also notes that article 43 provides that the State shall guarantee that pregnant women are not discriminated against on grounds of pregnancy in the educational, social and labour fields. The Committee further notes that article 47(5) of the Constitution recognizes the right of persons with disabilities to work under conditions of equality of opportunity with a view to developing their capacities and potential, through policies for their integration into public and private entities. ***The Committee asks the Government to provide information on the measures adopted or envisaged to give effect to these provisions.***

***Article 2 of the Convention. National equality policy.*** The Committee notes that Executive Decree No. 1733 (*Official Bulletin* No. 601 of 29 May 2009) abolished the National Women's Council (CONAMU) and established the Transition Commission to determine the public institutions that will guarantee equality between women and men, and which is entrusted with responsibility to prepare draft legislative reforms for the establishment of the National Gender Equality Council. The Committee notes that, in addition to the CONAMU, changes have also been made to the Council for the Development of the Peoples and Nationalities of Ecuador (CODENPE), the Afro-Ecuadorian Development Corporation (CODAE), the Council for the Development of the Coastal Montubio People (CODEPMOC), the Council for Children and Young Persons (CNA) and the National Disability Council (CONADIS). ***The Committee requests the Government to provide information on the outcome of this process of transition and on the institutions established in accordance with articles 156 and 157 of the new Constitution which are entrusted with responsibilities related to guaranteeing equality of opportunity and treatment in employment and occupation.***

***National policy on gender equality.*** The Committee notes the concern expressed by the Committee on the Elimination of Discrimination Against Women in its concluding observations of November 2008 about the high rates of women's underemployment and unemployment, especially in rural areas, and cases of gender discrimination in the workplace, including dismissals relating to maternity, and discriminatory labour practices against women, especially indigenous and migrant women and those of African descent (CEDAW/D/ECU/CO/7, 7 November 2008, paragraphs 34–36). ***The Committee once again requests information on the results achieved in the prevention and eradication of work by women under conditions of exploitation which, as noted by the Committee in its previous comments, was one of the objectives of the Equal Opportunities Plan 2005–09 (PIO). The Committee also requests the Government to provide detailed information on the policies and programmes intended to ensure equality of opportunity and treatment in employment and occupation for women, especially indigenous women, migrant women and women of African descent, and their impact.***

***Promoting the access of women to public sector employment.*** With reference to its previous observation, in which it noted with interest the conclusion of a Framework Inter-institutional Cooperation Agreement with a view to ensuring that effect is given to the principles of equality and equity between men and women in the processes of institutional modernization and the re-evaluation of work in public institutions in Ecuador, the Committee notes that, according to the Government's report, in the context of the above Agreement, gender was included in the Integrated Human Resources Information System (SIIRH) developed by the National Technical Secretariat for the Development of Human Resources and Remuneration in the Public Sector (SENRES) and the study "Public employment in Ecuador: A gender view" was published. It notes that the Transition Committee has also worked to introduce gender as a cross-cutting issue in the law and standards issued by the SENRES with the objective of promoting the access of women to public employment. ***The Committee requests the Government to provide further information on the introduction of gender as a cross-cutting issue in the standards issued by the SENRES with the objective of women gaining access to public employment and the impact of this measure. Noting that the Framework Inter-institutional Cooperation Agreement expires in December 2009, the Committee requests the Government to provide information on the measures envisaged to continue ensuring the application of the principle of the Convention in the public sector. The Committee also refers to its comments on the application of the Equal Remuneration Convention, 1951 (No. 100).***

***Legislation.*** The Committee notes that, according to the information provided by the Government, the draft amendment of the Cooperatives Act is before the National Assembly. ***With reference to its previous comments, the Committee urges the Government to take this opportunity to repeal section 17(b) of the Regulations of the Cooperatives Act, under which married women require the authorization of their husbands to be members of agricultural housing and family garden cooperatives. The Committee hopes that the Government will be in a position to provide information on the progress achieved in this respect in its next report.***

***Sexual harassment.*** The Committee notes that the Gender and Youth Unit of the Ministry of Labour is preparing a compendium on sexual harassment in the fields of education, labour, politics and domestic work which includes basic definitions, practical cases, national and international legislation and the contact details of support bodies and organizations. The Committee also notes the draft constitutional proposal of February 2008 to discourage situations of harassment, which involves the termination of officials who commit repeated offences of sexual and psychological harassment and abuse of authority. ***The Committee requests the Government to provide information on the impact that this compendium has had in terms of preventing sexual harassment in the working environment and to provide information on other measures that are being adopted to raise awareness of the harmful effects of harassment at the workplace. The Committee invites the Government once again to take appropriate legislative measures to prohibit sexual harassment in employment and occupation which include both quid pro quo and hostile work environment harassment.***

***Afro-Ecuadorian peoples.*** The Committee notes that the National Development Plan 2007–10 contains a component with the objective of combating historical disparities which hinder the human development of Afro-Ecuadorian persons. It notes that according to the statistics contained in the Plan, the racial prejudice index against Afro-Ecuadorian persons is 75.9 per cent. It also notes that, according to the living conditions survey of 2006, while a white person can obtain average monthly income from

employment of US\$316.60, an Afro-Ecuadorian person only obtains US\$210.80. With regard to the urban unemployment rate, the Committee notes that it is 11 per cent for Afro-Ecuadorian persons, compared with a national average of 7.9 per cent, and 17.5 per cent for Afro-Ecuadorian women. It further notes that 92.8 per cent of Afro-Ecuadorian persons do not reach university level. *The Committee requests the Government to provide detailed information on the results and impact of the various types of action envisaged in the plan referred to above, including the application of affirmative action measures, the development of the “Work without discrimination” programme and the action taken to promote and increase the access of young Afro-Ecuadorian persons to university. The Committee also requests information on the measures promoted, as envisaged in the Plan, to monitor and punish any act of racial discrimination against Afro-Ecuadorian persons on the labour market.*

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 future.*

## Egypt

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)**

*Article 1 of the Convention. Work of equal value. Legislation.* In its previous observation, the Committee emphasized once again that the equal remuneration provisions of Labour Law No. 12 of 2003 did not fully reflect the principle of equal remuneration for men and women for work of equal value as laid down in the Convention. The Committee therefore urged the Government to take appropriate measures to amend the provisions of the Labour Law so as to provide not only for equal remuneration for men and women for equal, the same or similar work but also to address situations where men and women perform different jobs, using different skills and involving different working conditions, but which are nevertheless jobs of equal value. In its reply, the Government reiterates its position that sections 35 and 88 of the Labour Law give full effect to the Convention. The Committee recalls that section 35 prohibits discrimination in wages based on, among other grounds, sex. While such a prohibition is a complementary aspect of equal remuneration for work of equal value, it is not in itself sufficient to give effect to the Convention, as it does not give effect to the principle of “work of equal value” (General Survey on fundamental Conventions, 2012, paragraph 676). The Committee notes further that section 88 is a general non-discrimination clause applying specifically to women workers where their working conditions are similar (or analogous). Neither section 35 nor section 88 refer specifically to “work of equal value”. The Government considers that the phrase “work that is similar” is equivalent to the phrase “work of equal value”. However, the Committee recalls that “work of equal value”, while including comparisons between jobs involving similar or analogous work, also encompasses comparisons between jobs that are entirely different in nature, but which are nevertheless of equal value.

The Committee notes, however, that pursuant to Ministerial Order No. 60 of 2011, a committee has been established to review the provisions of Labour Law No. 12 of 2003 and its amendments with a view to bringing the labour legislation into line with international labour standards. The Committee also notes that preliminary steps have been taken with a view to the adoption of an Act specifically addressing gender equality. *The Committee urges the Government to take the opportunity presented by this review of the Labour Law and by the drafting of an Act on gender equality to ensure that full legislative expression is given to the principle of equal remuneration for men and women for work of equal value. The Committee also asks the Government to provide information on the status of the work of the committee reviewing the Labour Law and regarding the drafting and adoption of an Act on gender equality.*

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. Discrimination on grounds of sex. Enforcement.* For a number of years the Committee has been referring to cases where women are obliged to provide pregnancy tests in order to apply for or remain in employment and to the dismissal of women with disabilities, particularly in the *maquila* (export processing zones) and in the industrial, trade and services sectors. The Committee notes the Government’s statement that between June 2009 and July 2012 the Special Unit on Gender and the Prevention of Discriminatory Labour Practices carried out 701 inspections in export processing zones, 186 of which gave rise to procedures for the imposition of fines. The Committee notes that inspections were also carried out at the request of the interested parties following the dismissal of pregnant women. In 2009, six out of 41 such inspections gave rise to fines, and the remainder of the cases were shelved; in 2010, nine complaints on the same issues were shelved; and between July 2011 and June 2012, fines were imposed in 15 cases out of 46 complaints. The Unit also undertook activities to disseminate Ministerial Circular No. 001/05 prohibiting employers from requiring HIV or pregnancy tests from women. The Committee observes that the Government has not provided any information on the dismissal of women with disabilities or on the programme for the full development of working women in the *maquila*, to which it referred in previous comments. The Committee recalls that the discriminatory nature of distinctions based on pregnancy and related medical conditions is demonstrated from the fact that they only affect women. The Committee also emphasizes the importance of governments, in collaboration with the social partners, adopting specific measures to combat this kind of discrimination effectively (see the General Survey on equality in employment



and occupation, 1988, paragraph 41, and the General Survey on fundamental Conventions, 2012, paragraph 784). The Committee also notes that women can suffer multiple discrimination based on sex and disability (see General Survey, 2012, paragraph 748). ***The Committee requests the Government to continue providing information on the inspections carried out by the Special Unit on Gender and the Prevention of Discriminatory Labour Practices of the Ministry of Labour and Social Welfare in the maquila, industrial, trade and services sectors and on the penalties imposed, as well as on judicial proceedings in this respect. The Committee also requests the Government to provide information on the implementation and impact of the programme for the full development of working women in the maquila, and other measures to promote awareness of this type of discrimination among employers and workers in all productive sectors.***

*Article 1(1)(b). Real or perceived HIV status.* The Committee notes the Government's indication that work is continuing on the amendment of the regulations to guarantee protection against all forms of discrimination on the ground of HIV status, to which it referred in its previous observations. Several governmental and civil society bodies are engaged in the revision process. It is planned to submit a draft of the amended text shortly for discussion in the appropriate committees of the Legislative Assembly. The Committee draws the Government's attention in this connection to the HIV and AIDS Recommendation, 2010 (No. 200). The Government adds that between June 2009 and June 2011, the Special Unit on Gender and the Prevention of Discriminatory Labour Practices conducted awareness-raising campaigns on relevant national and international provisions, and particularly on Ministerial Circular No. 001/05 prohibiting employers from requiring women to provide HIV and pregnancy tests. ***The Committee hopes that the future legislation will guarantee public sector workers effective protection against discrimination based on real or perceived HIV status and requests the Government to continue providing information on any developments in the adoption of the relevant legislation and its implementation in the private sector, and on any other measures to combat discrimination on grounds of the real or perceived HIV status of workers.***

*Article 2. Equality of opportunity and treatment for men and women.* The Committee notes with ***interest*** the adoption of the Act on equality, equity and the elimination of discrimination against women (Decree No. 645 of 4 April 2011). The Committee notes that the Act is of general application and adopts a transversal approach to the elimination of both direct and indirect discrimination in law and practice. The Act also provides that the Office of the Public Prosecutor shall be responsible for defending, guaranteeing and promoting equality and non-discrimination against women, and will accordingly establish an appropriate department as part of its structure and organization. The Government adds that its gender equality policy is being implemented through its Five-Year Development Plan 2009–14, (which includes the national policy for women), updated and adopted by the El Salvador Institute for Women's Development (ISDEMU). The Government also refers to the incorporation of the gender perspective in municipal planning, so as to create the necessary conditions for women to participate in all spheres of the development process. Local governments are implementing policies and action to promote gender equality in vocational training and local development and have adopted specific institutional capacity-building measures to foster gender equality (the creation of women's units at the municipal level, the formulation of municipal gender equality policies). The Committee notes, however, that the statistics supplied by the Government show that a serious gap exists in the participation of men and women in management positions in both the public and the private sectors and in both urban and rural areas. ***The Committee requests the Government to provide information on the implementation in practice of the Act on equality, equity and the elimination of discrimination against women, especially on the creation of the department responsible for defending, guaranteeing and promoting gender equality and non-discrimination against women. The Committee also requests the Government to indicate what impact the adoption of the Act has had, particularly with respect to the participation of women in the labour market and in management positions. Further, the Committee requests the Government to provide detailed information on the implementation of the gender equality policy and of the national policy for women adopted under the new Act on equality, equity and the elimination of discrimination against women, its impact in practice and the relationship between them.***

*Indigenous peoples.* The Committee notes the Government's indication that a number of measures have been taken to facilitate the identification of indigenous peoples and their members. The Committee notes especially the cooperation agreement signed by the Directorate for Indigenous Peoples with the Office of the Public Prosecutor, the National Registry of Natural Persons and the Corporation of Municipalities of El Salvador. The Government states that the measures adopted are intended to eradicate discrimination against indigenous peoples and to offer them access to national services, such as labour inspection and employment services. Measures have also been adopted to improve the productive capacity of women in craftwork. ***The Committee requests the Government to provide information on the impact of the measures adopted on improving access of indigenous peoples to the labour market and their access to education and vocational training. The Committee also requests the Government to provide statistical data disaggregated by sex in this regard.***

*Sexual harassment.* In its previous comments, the Committee requested the Government to consider adopting specific provisions guaranteeing protection against sexual harassment at work. The Committee notes the adoption of the Special Comprehensive Act on a life free from violence for women (Decree No. 520 of 25 November 2010), which covers harassment at work and physical, sexual, psychological, emotional and work-related violence where there exists a relationship of power or trust. The Committee notes that the ISDEMU is the body responsible for implementing the Act, preparing a framework policy and ensuring its enforcement. The Act stipulates that the offences it covers are subject to

criminal action and lays down procedural guarantees for women who are the victims of acts of violence, together with specific penalties for the various offences. The Committee also notes that the ISDEMU, along with other institutions, has adopted a strategy for preventing sexual harassment which involves public awareness and information measures and the modification of institutional regulations. The Committee notes, however, that the Act does not define sexual harassment at work clearly, in terms of including both *quid pro quo* and hostile working environment sexual harassment. It is also unclear whether the Act covers harassment by colleagues at work (see the general observation of 2002 on sexual harassment). ***The Committee requests the Government to provide information on the implementation in practice of the Special Comprehensive Act on a life free from violence for women in relation to the lodging of complaints of sexual harassment at work and how adequate protection is ensured both against quid pro quo and hostile working environment harassment, whether in the context of hierarchical relationships or between co-workers. The Committee also requests the Government to provide information on the operation of the procedure established for examining complaints of sexual harassment at work, and specifically on the provisions dealing with the burden of proof and the possibility for victims to obtain reinstatement and compensation. The Committee also requests the Government to provide statistics on the number of complaints lodged and their outcome, and to provide information on any awareness and information measures on sexual harassment in general and on the Act in particular. Further, the Committee requests the Government to provide information on the applicable provisions in cases of sexual harassment against men.***

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

## Ethiopia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)***

*Article 1(1)(a) of the Convention. Legislation. Grounds of discrimination.* The Committee recalls the absence of legislative protection against discrimination on the grounds of social origin and national extraction, particularly with respect to the Labour Proclamation No. 377/2003 and the Federal Civil Service Proclamation No. 515/2007. It notes the Government's indication that the grounds of social origin and national extraction are substantially covered by the term "any other" grounds in the legislation (section 14(1)(f) of the Labour Proclamation, and section 13(1) of the Federal Civil Service Proclamation). The Committee recalls, however, that where legal provisions are adopted, they should specify at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention (General Survey on fundamental Conventions, 2012, paragraph 853). ***The Committee asks the Government to take concrete steps to amend the Federal Civil Servants Proclamation No. 515/2007 and the Labour Proclamation No. 377/2003, with a view to specifying social origin and national extraction as prohibited grounds of discrimination, and to provide information on any progress made in this regard.***

*Scope of application.* The Committee recalls the importance of amending the Labour Proclamation with a view to explicitly providing that workers and candidates for employment, including citizens and non-citizens, are protected against discrimination. The Committee welcomes the Government's acknowledgement that continuous action is required to address discrimination, including the review and revision of laws, and notes the Government's assurance that the necessary efforts will be made to review the existing legislation to fulfil the principles and standards under the Convention. ***The Committee trusts that the Government will take steps to ensure that workers and candidates for employment, including non-citizens, are protected against discrimination in all aspects of employment and occupation, and asks the Government to provide information on any progress made in this regard.***

*Article 1(1)(b). Additional grounds of discrimination.* The Committee recalls the Proclamation No. 568/2008, to provide for the right to employment of persons with disability and section 13(1) of the Federal Civil Servants Proclamation, which prohibits discrimination against jobseekers or civil servants including on the grounds of disability and HIV status or AIDS. The Committee notes the Government's commitment to take the necessary steps to ensure that all workers and jobseekers are protected against discrimination in all aspects of employment and occupation. ***The Committee again asks the Government to provide information on the practical application of Proclamation No. 568/2008, including any affirmative action measures taken, and any cases of discrimination brought before the courts. Please also indicate whether a body has yet been established to implement this Proclamation. The Committee also again asks the Government to provide any information on the application of section 13(1) of the Federal Civil Servants Proclamation, in particular with respect to cases alleging discrimination based on disability or HIV status or AIDS and the results thereof.***

*Article 2. Equality of opportunity and treatment between women and men. Education and training.* The Committee notes the statistical information provided by the Government that the gross enrolment rate for general education has reached 90.15 per cent for girls and 96.6 per cent for boys, and among the total of 371,347 participants in technical and vocational education and training in 2009–10, 171,548 were women. It also notes the Government's indication that there have been significant achievements in expanding education and training at different levels in the country. The Committee recalls that access to education and to a wide range of vocational training courses 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 (General Survey, 2012, paragraph 750). *The Committee asks the Government to provide information on any policies, or studies and surveys conducted to address unequal access of women to training and education at all levels, including statistical data on the participation of men and women in the various courses. It also asks the Government to provide information on the results achieved through such measures, including the number of men and women, respectively, who have secured employment after completing the training courses.*

*Equality of opportunity and treatment irrespective of race and colour. Indigenous communities.* The Committee notes the Government's indication in general terms that it has given due consideration to the development of pastoral regions in its development policies, strategies and programmes, including its five-year Growth and Transformation Plan. The Government also indicates that programmes undertaken to develop pastoralist communities include (i) a water centred development programme aiming at food security; (ii) a sustainable land management programme targeting land degradation; (iii) a land administration programme aiming at securing land tenure. *The Committee asks the Government to indicate to what extent consideration is given to the land-based pastoralists' livelihood and way of life in establishing and implementing the national policy and planning frameworks, including in the context of the programmes undertaken to develop pastoralist communities, with a view to tailoring them to pastoralists' specific needs. It also asks the Government to indicate how the traditional land rights of pastoralist communities are safeguarded under the national policy, particularly in the context of private land ownership and large-scale industrial farming projects that could be or are being implemented in rural areas. Please also provide any information on the role of the pastoralist communities in the process of the development and implementation of the national policy and planning frameworks.*

*Follow-up to the recommendations made by the Tripartite Committee (representation made under article 24 of the ILO Constitution).* The Committee recalls that the final award for damages claims was rendered on 17 August 2009. The Committee notes the Government's indication that since Eritrea has not yet settled the payment to Ethiopian workers, the final award has not been enforced, and that the Government is not in a position to provide information on the actual remedies granted to Ethiopian displaced workers. *Recalling that the Claims Commission, in its decision of 27 July 2007, recognized that each State party had full authority to determine the use and distribution of any damages awarded to it, the Committee asks the Government to indicate the measures taken or envisaged to grant actual relief or remedies to the workers displaced following the outbreak of the 1998 border conflict.*

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

## Fiji

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)**

*Article 1 of the Convention. Work of equal value. Legislation.* The Committee recalls its previous observation in which it noted that section 78 of the Employment Relations Promulgation (ERP), 2007, does not give full legislative expression to the principle of the Convention because it restricts the comparison of remuneration to men and women holding the "same or substantially similar qualifications" employed in the "same or substantially similar circumstances". The Committee recalls that such legislation should not only provide for equal remuneration for equal, the same or similar work, but should also address situations where men and women perform different work, requiring different qualifications and involving different circumstances, that is nevertheless work of equal value (see General Survey on fundamental Conventions, 2012, paragraph 673). The Committee noted previously the Government's reply that this issue would be referred to the Employment Relations Advisory Board for consideration. The Committee notes with *regret*, however, that the Government's present report contains no information on this point. *The Committee urges the Government to take the necessary steps to amend section 78 of the ERP so as to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, 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)**

*Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011).* In its previous observation and in the absence of a report, the Committee recalled that a discussion has taken place in the Conference Committee on the Application of Standards in June 2011. In the resulting conclusions, the Conference Committee urged the Government to ensure that the principles contained in the People's Charter for Change, Peace and Progress adopted in 2008 were translated into concrete action, and called upon the Government: (i) to amend or repeal all racially discriminatory laws and regulations, including the Education (Establishment and Registration of Schools) Regulations, 1966; (ii) to effectively address discriminatory practices; and (iii) to ensure equality in employment, training and education for all persons of all ethnic groups. The Conference Committee also addressed the right of government employees to non-discrimination and equality in employment, as well as the low labour force participation of women, and asked that measures be taken. The Conference Committee also noted concerns regarding the difficulty in exercising the right to freedom of association in the country, and called on the

Government to establish the conditions necessary for genuine tripartite dialogue, with a view to addressing the issues related to the implementation of the Convention. ***The Committee notes that the Government has not replied to the latter point and asks the Government to provide specific and detailed information in this regard.***

*Article 1(1) of the Convention. Protection against discrimination. Public service. Legislation.* The Committee recalls that the Employment Relations Promulgation of 2007 (ERP) explicitly prohibits direct and indirect discrimination in employment and occupation and covers all the prohibited grounds listed in *Article 1(1)(a)* of the Convention, as well as a number of additional grounds, as envisaged under *Article 1(1)(b)*. It also recalls that further to the adoption of the Employment Relations (Amendment) Decree 2011 (Decree No. 21 of 2011) on 13 May 2011, government employees, including teachers, were excluded from the scope of the ERP and thus from its non-discrimination provisions. As regards employees excluded, and in general persons employed in the public service, the Committee welcomes the adoption of the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) on 29 July 2011, which inserts in the Public Service Act 1999 new Parts 2A and 2B respectively on Fundamental Principles and Rights at Work and Equal Employment Opportunities. The Committee notes that section 10B(2) prohibits, in all aspects of employment, discrimination based on ethnicity, colour, gender, religion, national extraction and social origin, omitting however, political opinion which is listed in section 6(2) of the ERP. It also includes the additional grounds of sexual orientation, age, marital status, pregnancy, family responsibilities, state of health including real or perceived HIV status and AIDS, trade union membership and disability. The Committee also notes that section 10C on prohibited grounds of discrimination, whether direct or indirect, refers to “actual or supposed personal characteristics or circumstances, including: ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age, disability, HIV/AIDS status, social class, marital status (including living in a relationship in the nature of a marriage), employment status, family status, religion or belief”, omitting “opinion” which is listed in section 75 of the ERP. While welcoming the recent legislative measures, particularly with respect to the additional grounds of discrimination, the Committee recalls that where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention. ***The Committee requests the Government to take the necessary measures to include political opinion among the prohibited grounds of discrimination listed in the Public Service Act 1999. The Committee also requests the Government to indicate how public service employees and applicants to public service employment are protected against discrimination based on political opinion in practice.***

The Committee recalls that the Conference Committee noted that further to section 3 of Decree No. 21 of 2011, prohibits any action, proceeding, claim or grievance “which purports to or purported to challenge or involves the Government ..., any Minister or the Public Service Commission ... which has been brought by virtue of or under the [Employment Relations Promulgation]” and that it urged the Government to ensure that government employees had access to competent judicial bodies to claim their rights and to adequate remedies. ***While noting the Government’s indication regarding the jurisdiction of the High Court to hear any application for judicial review of the decisions of the Public Service Commission concerning termination of government employees, the Committee asks the Government to provide detailed information on the procedure and means of redress available to workers excluded from the scope of the ERP, alleging discrimination in employment or occupation which purport to challenge or involve public authorities. The Government is requested to provide information on the number of complaints submitted, the grounds invoked, the remedies granted and the sanctions imposed.***

*Article 1. Equal access to education and vocational training.* In its previous comments, the Committee noted that the education system was to undergo an extensive reform and requested the Government to indicate whether the Education (Establishment and Registration of Schools) Regulations, 1966, which provide that in the admission process preference may be given to pupils of a particular race or creed, was still in force. According to the Government’s report, a draft Education Decree that will repeal the Education Act and all its subordinate legislation, including the 1966 Regulations, is being prepared. The draft Decree has been vetted by the Attorney-General and sent back to the Ministry of Education for amendment. The Committee notes that section 26(3) of the draft Education Decree provides that “no child shall be denied admission solely on grounds of race, age, disabilities or religion”. The Committee recalls in this regard that access to education and to a wide range of vocational training courses is of paramount importance to achieving equality in the labour market (General Survey on Fundamental Conventions, 2012, paragraph 750). ***The Committee trusts that the Government will take the necessary measures to ensure the equal access of boys and girls, men and women from all ethnic groups to education and vocational training, and asks the Government to provide information on the measures taken to implement the reform of the educational system, including the adoption of the new Education Decree, and the results achieved. It requests the Government to clarify whether under section 26(3) of the draft Education Decree, the grounds of race, age, disability or religion can still be invoked, possibly in combination with other grounds, as one of the reasons to deny admission to school and to specify the grounds, if any, on the basis of which admission may be denied. The Committee reiterates its previous request for statistical information on the number of schools still applying race or creed as an admission requirement as well as the number of pupils enrolled in these schools.***

*Article 2. National policy to promote equality of opportunity and treatment irrespective of race, colour and national extraction.* In its previous comments, the Committee noted 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. It further noted that the Charter also contains

specific measures concerning indigenous peoples and their institutions and that a number of recommendations were made by the NCBBF, such as the need to promulgate legislation prohibiting discrimination based on race, religion and sexual orientation, as well as legislation protecting the rights of ethnic minority groups (Indians, Pacific Islanders, Chinese, European and landless Fijians), especially with a view to improving access to land. As far as implementation is concerned, the Committee notes from the Government's report that racial and inappropriate categorization and profiling in government records are being removed, the education system is being reformed and the name "Fijian" is to be applied to all citizens of Fiji while the name "i-Taukei" is used to designate indigenous Fijians who represent around 60 per cent of the population of Fiji. ***The Committee requests the Government to continue to provide information on the concrete measures taken to implement the Peoples' Charter for Change, Peace and Progress with a view to prohibiting and eliminating discrimination, in particular racial discrimination, and to promote equal opportunities for all, including minority groups, in relation to access to education, vocational training, employment and various occupations. The Government is requested to provide information on any action or programmes undertaken by the Ministry for i-Taukei Affairs to promote equality in employment and occupation, including awareness-raising campaigns promoting tolerance between all components of the population.***

***Affirmative action.*** The Committee notes the Government's indication that it has decided to replace the old affirmative action scheme in favour of indigenous peoples by a new "action scheme across all the races based on a means test" as part of the reform undertaken to develop and implement inclusive, non-discriminatory and non-race based policies towards the goal of common citizenry. It further notes that scholarship schemes that used to be race-based have been discontinued. The Committee wishes to recall that when adequately designed, affirmative action measures are aimed at ensuring equality of opportunity in practice, taking into account the diversity of situations of the persons concerned, so as to halt discrimination, redress the effects of past discriminatory practices and restore a balance, and that they are part of a broader effort to eliminate all inequalities and an important component of the national equality policy, referred to in *Article 2* of the Convention. Such measures must genuinely pursue the objective of equality of opportunity, be proportional to the nature and scope of the protection or assistance needed or of the existing discrimination, and be examined periodically in order to ascertain whether they are still needed and remain effective. Affirmative action grounded on the prior consultation and consent of the stakeholders, including workers' and employers' organizations, helps to ensure that the measures taken are broadly accepted, effective and in line with the principle of non-discrimination (General Survey, 2012, paragraphs 862–864). ***In the light of the above, the Committee requests the Government to provide detailed information on the new action scheme envisaged and its implementation in the fields of education, vocational training, employment and occupation, indicating how it intends to remedy de facto inequalities, redress the effects of past discriminatory practices and promote equal opportunities for all. Please specify if the new scheme provides for monitoring and assessment mechanisms.***

***Gender equality.*** The Committee notes that the Government's report contains information on the general strategies adopted to promote gender equality and promote the creation of enterprises by women, but does not provide any information on concrete measures taken for that purpose nor on the results achieved through, for instance the implementation of the Women's Plan of Action 1999–2008 to which the Committee referred in its previous comments. The Committee notes the statistics regarding the participation rate of women on a number of bodies, such as the Employment Relations Advisory Board (29 per cent), the National Occupational Safety and Health Advisory Board (13 per cent) and the Wages Councils (20 per cent). The Government states that it aims to reach a participation rate of 30 per cent of women on employment and industrial relations bodies. The Committee further notes that the statistical data on the labour force provided by the Government are not disaggregated by sex and therefore do not give sufficient information on the participation of women and men in the labour market. The Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), while welcoming the new Women's Plan of Action (2010–19), again expressed concern at the persistence of practices and traditions, as well as strong patriarchal attitudes and deep-rooted stereotypes, regarding the roles, responsibilities and identities of women and men in all spheres of life. Such practices and customs perpetuate discrimination against women and girls and may constitute obstacles to their education. The Committee notes CEDAW's concerns about the insufficient financial and human resources allocated to the national machinery for the advancement of women, as well as regarding the high number of women in the informal economy with no social security or other benefits and the unequal de facto situation of rural women in terms of access to land and credit (CEDAW/C/FJI/CO/4, 30 July 2010, paragraphs. 6, 16, 17, 20, 21, 28, and 30). ***The Committee requests the Government to provide detailed information on the concrete measures taken to promote effectively gender equality in employment and occupation, in the framework of the former and the new Women's Plan of Action or otherwise, including measures taken to address gender stereotypes and improve the access of women to occupations traditionally held by men, through education and training, as well as measures taken to improve the access of women to land and credit. It also requests the Government to indicate the measures taken to increase the participation of women on employment and industrial relations bodies, and the results achieved.***

***Article 3(d). Promoting equality in employment under the control of a public authority.*** The Committee notes that the statistics provided by the Government on the number of men and women employed in the public sector, disaggregated by status (permanent, under a contract or temporary) show a balance between men and women. The Committee notes however that in its most recent concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) drew the Government's attention to the under-representation of minorities in public services and

to the need to assess the reasons for this phenomenon and address it effectively (CERD/C/FJI/CO/18-20, 31 August 2012, paragraph 12). *While noting the Government's general statement that all ministries are implementing the Equal Employment Opportunity Policy, the Committee requests the Government to provide information on concrete measures taken to ensure equality of opportunity and treatment of men and women from all ethnic groups in employment in the public service. Please also provide up-to-date statistics on the representation of men and women, from all ethnic groups, in the different categories, levels and grades in the public service.*

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 observations by the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), the Finnish Confederation of Professionals (STTK), and the Confederation of Finnish Industries (EK) attached to the Government's reports.

*Gender pay gap.* The Committee notes from the Government's report that the difference in pay between men and women was 17.9 per cent in 2011, and that according to the Government the gender pay gap has decreased, even if it has not reached the tripartite equal pay programme's target of narrowing the gender pay gap to 15 per cent by the year 2015. Payment by results (bonuses) has had an influence on the gender pay gap especially during the recent recession, and the Parliament's Employment and Equality Committee is of the view that the Equality Act (Act on Equality between Men and Women (609/1986)) should state more clearly that the definition of remuneration includes various additional forms of payment. SAK, STTK and AKAVA indicate that only 11 per cent of female AKAVA members received a performance bonus in 2010, while 27 per cent of male members received such a bonus. The Committee also notes the Government's indication that labour market segregation remains the main reason for the gender pay gap, and in this context the Committee notes the information provided in the Government's report under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In this connection, the Committee notes the observation of the STTK that the objective under the equal pay programme to increase the number of people employed in "gender-equal job positions" (where the share of women and men is between 40–59 per cent) to one fifth in 2012, is unlikely to be achieved. *The Committee asks the Government to refer to the comments made under Convention No. 111 on the issue of occupational gender segregation. It also asks the Government to indicate any measures taken in the context of the economic recession to implement the equal pay programme, and the impact of such measures at national, sectoral and workplace level. Please provide information on any other measures aimed at decreasing the gender pay gap, as well as the fullest possible statistical data on differences in men's and women's earnings with a view to assessing progress made. Please also provide information regarding any steps taken to amend the Equality Act to clarify that "remuneration" includes various forms of additional payments.*

*Equality plans and equal pay surveys.* The Committee recalls its previous comments concerning the implementation gaps of equality pay surveys under the Equality Act. It notes the Government's indication that according to a governmental survey in 2008–09, compliance with the obligation to draft equality plans in the workplace remains insufficient, and the quality of plans and pay survey requires improvement. In this connection, a series of articles drafted by the Ministry of Social Affairs and Health on equality planning in the workplace were effectively distributed through organizational publications and professional journals; in 2010, the Ministry and employers' and workers' organizations jointly produced an extensive set of training materials on equality planning for the workplace. The Committee notes that SAK, STTK and AKAVA consider that the employer's obligation to analyse pay surveys should be included in the legislation. In this connection, the Government indicates that a tripartite working group appointed by the Government to examine the functionality and development needs of pay surveys completed its work in June 2012, and proposed updating the training on equality plans and pay surveys. It also notes the Government's indication that Parliament placed an emphasis on securing employee representatives' right to access to information in connection with pay reviews. It further notes the summary provided by the Government of the report on the functionality of the Equality Act, which includes the description of the obligations related to equality plans, as well as issues concerning the implementation of the Act and access to pay data. *The Committee asks the Government to provide specific information on the content of the training on equality planning for the workplace, as well as the results achieved. It also asks the Government to indicate how the participation of employees and their organizations is ensured in the development of equality plans and implementation of pay survey. The Committee also asks the Government to provide further information on the actual impact of the pay survey on reducing gender pay differentials in the private and public sectors, including relevant statistical data, and information on the number of equal pay surveys that have resulted in specific follow-up action, including corrective action where pay discrimination was found.*

*Indirect discrimination with respect to remuneration.* The Committee recalls the concerns expressed by AKAVA that young educated women are employed more often than men on a fixed-term basis particularly in the public sector, and that career progress for highly educated women employed on a fixed-term basis is as much as ten years behind that of men with corresponding levels of education. The Committee notes from the statistical information on the central Government fixed-term employment provided by the Government that, while the proportion of women is 52.6 per cent, the difference

in pay between men and women was 8.7 per cent in 2009, which is one percentage point decrease from the previous year. *The Committee asks the Government to indicate how the issue of female concentration in fixed-term employment is addressed in the context of indirect discrimination with respect to remuneration, and to identify any gaps in the legislation on equal remuneration in this respect. It also asks the Government to continue to provide statistical data, disaggregated by sex and age, on the employment of men and women on fixed-term contracts in the public sector, and their corresponding levels of remuneration.*

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1970)***

*Access to employment and occupation of the Roma.* The Committee notes with *interest* the National Policy on Roma, finalized in 2009, which contains six key objectives including the following: (i) enhancing education for Roma children and youth; (ii) enhancing education of adults and promoting their access to the labour market; and (iii) promoting equal treatment and preventing discrimination. Measures to be taken under the Policy include determining the educational needs for the allocation and development of vocational education and training for the Roma, enhancing the integration of Roma into the labour market through more efficient public employment services and multi-professional cooperation, raising the awareness of the Roma population of their right to non-discrimination, starting a national media campaign aimed at the elimination of prejudices, and ensuring the inclusion of the Roma issues in equality planning. A group for implementing and monitoring the measures under the Policy was also appointed in March 2012. The Committee also notes that the three-year TEMPO project started in 2008, which provides support for employment Offices and the employment process for Roma and immigrants, including counselling services for poorly educated long-term unemployed persons in gaining access to education, vocational training or the labour market. The Government has also appointed a working group in 2010 to prepare a Roma strategy which should have an impact internationally through enhancing policy coordination on Roma both at the national level and the level of the European Union. *The Committee welcomes such initiatives and asks the Government to provide information on follow-up actions being taken, in cooperation with the social partners, to the National Policy on Roma, and results achieved. Please also provide further specific information on the access of the Roma to education at all levels, as well as to employment and particular occupations.*

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

### ***Workers with Family Responsibilities Convention, 1981 (No. 156)*** ***(ratification: 1983)***

The Committee notes the observations of the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), and the Commission for Local Authority Employers (KT), attached to the Government's report.

*Articles 3 and 4(b) of the Convention. National policy and leave entitlements.* The Committee recalls that promoting men's engagement in parenting and caring for children is an integral aspect of the Finnish gender equality policy. It notes the Government's first report on gender equality 2011, which outlines the Government's views on the future gender equality policy until the year 2020. The Committee also notes that one of the long-standing gender equality policy goals set out in the report, is a more equal distribution of family leave between parents, and that measures to achieve the goal of reconciliation of work and family life include the following: (i) extension of the right to leave for taking care of family members other than dependent children; (ii) increasing the use of family leave by fathers; (iii) improving compensation for costs incurred by employers due to parenthood; and (iv) addressing the needs of diverse types of families. The Committee further notes the Government's indication that the Ministry of Social Affairs and Health carried out a family leave campaign in 2007 and 2008, and that in 2009, 73 per cent of the fathers used their paternity leave, 18 days at the most, and that the take-up of the extended paternity leave increased 13.5 per cent in 2010 from the previous year; however, fathers used only 7.1 per cent of all permitted parental allowance days in 2010. The Government further indicates that in order to encourage fathers to increase their use of parental leave, in March 2011, a parental leave work group appointed by the Ministry of Social Affairs and Health, submitted to the Government a memorandum on possible legislative amendments concerning the parental leave system. *The Committee asks the Government to provide information on the progress of any legislative amendments with regard to the parental leave system. It also asks the Government to clarify whether the family leave campaign is continuing, and to provide information on the impact of such activities, including statistical information on the extent to which men take family leave. Please also provide information on other measures taken to promote an equitable sharing of family responsibilities between men and women, as well as a copy of the interim report on gender equality, due in 2016.*

*Articles 7 and 8. Return to work following family leave and protection from dismissal.* The Committee recalls that section 9 of Chapter 7 of the Employment Contract Act appears to be primarily concerned with dismissal during a family leave period, rather than dismissals upon return. It also notes that SAK and AKAVA reiterate their previous concerns regarding the risk that employers may rearrange work and hire new employees so that there is no longer work available for the person returning from family leave, thus making his or her dismissal possible. In its reply, the Government refers to the "presumption provision" in the Employment Contract Act, which shifts the burden of proof for a

reason of termination on to the employer, and the Government indicates that no cases have been presented to the Supreme Court or the Supreme Administrative Court during the reporting period. In this context, the Committee notes that the United Nations Committee on the Elimination of all forms of Discrimination against Women, in its concluding observations urged the Government to prevent the practice of illegal dismissal of women in cases of pregnancy and childbirth (CEDAW/C/FIN/CO/6, 15 July 2008, paragraphs 183 and 184). ***The Committee asks the Government to provide information on the practical application and effects of the provisions concerned with the ability of workers returning from family leave to remain integrated in the labour force. In this regard, the Committee again asks the Government to continue to provide information on any relevant court decisions.***

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)***

*Article 1(1)(a) of the Convention. Discrimination on the basis of race, colour or national extraction.* In its previous comments, the Committee emphasized that, despite certain initiatives, the various measures and schemes did not appear to be producing sufficient results in terms of combating effectively discrimination in employment on the basis of race or national extraction, particularly with regard to the access to employment of young French nationals of foreign origin, and it requested the Government to strengthen its action and to promote equality actively in this field. The Committee also noted the action programme and recommendations drawn up in 2009 by the Commissioner for Diversity and Equal Opportunities, which contained a list of measures to be taken to promote equality of opportunity, particularly in education and employment. It further noted that in its concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) noted the draft national plan to combat racism (CERD/C/FRA/CO/17-19, 27 August 2010, paragraph 9).

In this respect, the Committee notes the information provided by the Government in the report to the CERD on the follow-up to its recommendations, according to which the National Plan of Action against Racism and Anti-Semitism, including a component on the “promotion of equal opportunities, particularly in professional matters”, is in the process of being completed (CERD/C/FRA/CO/17-19/Add.1, 6 October 2011, paragraph 7). The Committee also notes that, according to the annual report (2011) of the Office of the Rights Ombud, the institution into which the High Authority to Combat Discrimination and Promote Equality (HALDE) was integrated in 2011, “origin”, which is understood as “national extraction” within the meaning of *Article 1(1)(a)* of the Convention, remains the ground of discrimination most frequently referred to in complaints relating to employment (23.5 per cent of all complaints registered), and employment remains the field in which the largest number of complaints are received (48.3 per cent of the total number of complaints). The Committee also notes the publication in February 2010 of a report by the Committee for the Measurement of Diversity and the Evaluation of Discrimination (COMEDD), entitled “Inequality and discrimination: Towards a critical and responsible use of statistics”, to which the Government refers in its report. The report of the COMEDD calls for the establishment of a regular statistical information system on discrimination and diversity; the creation of a discrimination observatory; and the introduction in enterprises with over 250 employees of a comparative report on the situation regarding differences of treatment related to origin that employers would be required to complete each year concerning recruitment, promotion, type of contract, access to training, level of remuneration, etc., along the lines of the measures taken to measure gaps between men and women in enterprises with more than 50 employees. The report adds that the comparative situation report could be forwarded to staff representatives with a view to defining programmes to combat discrimination in the context of the national inter-occupational agreement on diversity in the enterprise, concluded in 2006 and made compulsory in 2008. With regard to the implementation of this agreement, the Government indicates in reply to the Committee’s request for information, that it would appear to be practically impossible to assess the number of specific enterprise agreements that cover diversity in whole or in part. The Committee notes however that the inter-occupational agreement envisaged the establishment of a joint monitoring commission to assess the implementation of its provisions in the various branches, enterprises and territories.

***With reference to its previous observation and noting that progress does not appear to have been made in relation to equality in employment and occupation without distinction as to race, colour or national extraction, the Committee requests the Government to take measures without further delay, in collaboration with workers’ and employers’ organizations, with a view to combating effectively the problem of discrimination on the above grounds and addressing the underlying causes, including measures to combat prejudices and stereotypes against certain groups of the population and to promote tolerance. It requests the Government to provide information on any measures adopted in this regard. The Committee also requests the Government to provide further information on the following points:***

- (i) ***the content and implementation of the National Plan of Action to Combat Racism and Anti-Semitism in education, vocational training and employment;***
- (ii) ***any action taken as a result of the programme of action and recommendations made by the Commissioner for Diversity and Equal Opportunities and the recommendations of the COMEDD in relation to employment, including the comparative situation report and the role of the social partners.***



*The Government is also requested to provide detailed information on the implementation of the national inter-occupational agreement on diversity in the enterprise and to provide the findings of any assessment of the action taken to promote equality of opportunity and treatment at the branch and enterprise level.*

*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 on wearing any conspicuous religious signs or apparel in public schools under penalty of disciplinary measures, including expulsion. *The Committee notes that the Government's report still does not contain any information on this subject and it once again requests the Government 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 students who have been expelled from school on the basis of the Act, disaggregated by sex and age, and the nature of the religious sign or apparel at issue; and*
- (iii) the measures taken to ensure that the pupils who have been expelled nonetheless have access to 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 for women to find employment in future, and asks the Government to provide specific information on the impact respectively on men and women's employment opportunities.*

In its previous comment, the Committee noted the adoption of Act No. 2010-1192 of 11 October 2010 prohibiting the concealment of the face in public places and it requested the Government to provide information on its application in practice. The Committee notes that the Government's report does not contain any information on this subject. *In view of the discriminatory effect that this Act may have, the Committee once again requests the Government to provide information on the application in practice of Act No. 2010-1192 in relation to employment and occupation. It requests the Government to indicate what steps are being taken to ensure that the implementation of this Act does not have the effect of preventing women of Muslim religion wearing a full veil to find and exercise employment, and to indicate whether any measures are envisaged to evaluate the impact of this text.*

*Equality of opportunity and treatment for men and women in the public service.* The Committee notes that the Government's report does not contain any information on this subject. However, the Committee notes the information contained in a report on "occupational equality for men and women in the public service", submitted by a member of Parliament to the President of the Republic in January 2011, which provides a detailed description of the inequalities which persist to the detriment of women, including horizontal and vertical occupational segregation, pay gaps and career progression (including part-time work), and makes numerous recommendations to resolve them. In this respect, the Committee notes with *interest* the adoption of Act No. 2012-347 of 12 March 2012 respecting access to titular employment and the improvement of the terms and conditions of employment of contractual agents in the public service, action to combat discrimination and various provisions respecting the public service, and the adoption of Decree No. 2012-601 of 30 April 2012 respecting arrangements for balanced recruitment at the higher levels of the public service, determining the posts concerned. The Act sets numerical and progressive objectives for the appointment of women to higher managerial posts (section 56: 20 per cent in 2013-15, 30 per cent in 2015-17 and 40 per cent as from 2018) and quotas for the representation of women on the executive boards of public establishments and other bodies (section 52-55), and contains provisions on parental leave. It also provides that an annual report shall be issued on occupational equality, including in relation to recruitment, training, working time, promotion, conditions of work, remuneration and the reconciliation of working and private life (section 51). *The Committee asks the Government to continue adopting measures, in collaboration with the social partners, to promote equality for men and women in the public service and encourage the internal professional development of women, and to provide information on the implementation of occupational equality measures, including the numerical objectives and quotas for recruitment envisaged in the Act, and the results obtained. The Committee requests the Government to indicate any action taken on the other proposals contained in the report on occupational equality for men and women in the public service of 2011.*

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

## **New Caledonia**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)***

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation.* In its previous comments, the Committee noted that section Lp.112-1 of the Labour Code provides that it is prohibited to take into account, in an offer of employment, recruitment or in the labour relationship, a person's origin, sex, pregnancy, family situation, actual or presumed membership or non-membership of an ethnic group, nation or race, political opinion, trade union activities, disability or religious convictions. It consequently requested the Government to indicate the measures taken or envisaged to include colour among the prohibited grounds of discrimination set out in the Labour Code, and to indicate whether the notions of "social origin" and "national extraction" are covered by one of the grounds set out in this section. The Committee notes the Government's statement that no measure has been adopted or envisaged to include colour among the prohibited grounds of discrimination set out in section Lp.112-1 of the Labour Code, and that this section does not

explicitly cover the notions of “social origin” and “national extraction”. *Recalling that, where effect is given to the Convention by national legislation, it should cover as a minimum all the prohibited grounds of discrimination set out in Article 1(1)(a) of the Convention, the Committee requests the Government to take the necessary measures to ensure that any discrimination in employment and occupation based on colour, national extraction or social origin is explicitly prohibited and to provide information on any measure taken in this respect. In the absence of legislation on this matter, the Committee also requests the Government to indicate the manner in which workers are protected in practice against discrimination on the grounds of colour, national extraction or social origin.*

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

## Ghana

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1968)**

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:

*Equal remuneration for work of equal value. Legislation.* In its previous comments, the Committee had asked the Government to provide information on the progress made with a view to amending section 68 of the Labour Act 2003, which provides only for equal pay for equal work, so as to ensure full conformity with the principle of equal remuneration for work of equal value set out in the Convention. Section 10(b) of the Labour Act is expressed in the same terms. The Committee notes from the Government’s report that due to a change of government, the Committee’s comments in this respect are still being examined by the new Minister responsible for Labour. *With reference to its previous comments and recalling its 2006 general observation on the principle of equal remuneration for work of equal value, the Committee trusts that the Government will take the necessary measures in the near future with a view to amending sections 10(b) and 68 of the Labour Act 2003 in order to give full legislative expression to the principle of the Convention.*

*Remuneration in the public sector.* The Committee notes that the job evaluation exercise undertaken to determine the value of all public sector jobs, one of the objectives of which is to ensure that jobs within the same job value range are paid within the same pay range, was completed in April 2009. As a result, a single spine pay structure was adopted. The Committee also notes that the ultimate goal for the National Job Analysis and Evaluation Exercise, as set out in the briefing notes on the public sector pay policy attached to the Government’s report, “was to enable government to reward its employees in accordance with the principle of “equal pay for equal worth” consistent with article 24(1) of the 1992 Constitution of Ghana and section 10(b) of the Labour Act”. Both the Constitution and the Labour Act refer however to “equal pay for equal work”. The evaluation has been made on the basis of four main job factors (knowledge and skill, responsibility, working conditions and effort) which were subdivided into 13 sub-factors and it has used the point factor method. The Committee notes that during the consultative workshop held in May 2009 on the single spine pay policy, the Ministry of Employment and Social Affairs and the Ghana Trade Union Congress agreed that the policy should be implemented, as of 1 January 2010, while efforts are being made to address concerns and challenges that may arise from its implementation. It also notes that the unions and associations were to submit outstanding issues or concerns to the Fair Wages and Salaries Commission. *The Committee asks the Government to ensure that the principle of equal remuneration for men and women for work of equal value will be duly taken into account and recognized as an explicit objective in the implementation of the public sector pay policy. It also asks the Government to provide information on the implementation process of this policy, including on the issues dealt with by the Fair Wages and Salaries Commission and the steps taken by this Commission to ensure full application of the principle of the Convention in the public service. The Government is requested to provide a copy of the single spine pay policy and of the single spine pay structure 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.*

## Greece

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)**

The Committee notes the Government’s reports received on 23 February and 31 August 2012.

The Committee recalls the discussion that took place in the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It recalls the report of the high-level mission of the ILO which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the International Monetary Fund in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Conference Committee.

*Impact of the measures on the application of the Convention.* The Committee recalls that section 4(1) of Act No. 3896/2010 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation provides that men and women shall be entitled to equal pay for the same work or for work of equal value. The Committee also recalls the observations made by the Greek General Confederation of Labour (GSEE) dated 29 July 2010 and 28 July 2011 that: (i) the measures implemented under structural reforms in the framework of the support mechanism in the area of wages and the related system of collective bargaining, social security and security of employment had an impact on the application of the Convention; (ii) the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures adversely affected the negotiating power of women, and would lead to their over-representation in precarious low-paid jobs; and (iii) the

minimum protection level, including wages of some workers, including domestic workers and workers in agricultural undertakings, excluded from the scope of the labour law protection, is being significantly weakened. The Committee notes the Government's indication that the measures adopted for the reduction of undeclared work and social security reform do not affect equal pay for men and women, as the measures are adopted within the institutional framework of collective bargaining. The Government also indicates that a compulsory use of a payment format leads to wage protection, and the inclusion in the social security system of domestic workers and agricultural workers. In this connection, the Committee recalls the deep concern expressed by the high-level mission of the ILO particularly on the provisions of Act No. 4024/2011, empowering associations of persons to conclude collective agreements at enterprise level. The Committee refers to its comments under Convention No. 98, observing with deep concern that the changes, aimed at permitting deviations from higher level agreements through "negotiations" with non-unionized structures, are likely to have a significant – and potentially devastating – impact on the industrial relations system in the country, and deeply regretting that such far-reaching changes were made without full and thorough discussions with all the social partners concerned. **The Committee asks the Government to indicate the impact of the structural reform measures taken in the framework of the support mechanism on the practical application of section 4(1) of Act No. 3896/2010, including how collective agreements give institutional guarantee to the principle of equal remuneration for men and women for work of equal value.**

*Impact on the gender pay gap in the public sector.* The Committee recalls the information in the report of the high-level mission that Act No. 3986/2011 and Act No. 4024/2011 introduced and further defined the system of "labour reserve" in the core and wider public sector, which was likely to have an impact on female unemployment. The Committee notes the Government's indication that Act No. 4024/2011 introduced a new pay-scale and a grading system, which according to the report of the high-level mission resulted in wage cuts of up to 50 per cent in certain cases. The Committee notes the Government's indication that 783 civil servants had been put on pre-retirement suspension from work, and 445 public employees had been put in labour reserve, but no more detailed data disaggregated by sex is available. **With a view to assessing the impact of the measures taken in the framework of structural reforms on the application of the Convention in the public sector, the Committee again asks the Government to collect and analyse statistical information, disaggregated by sex, on the distribution of men and women in the various occupations of the core and the wider public sector and the corresponding levels of remuneration, allowing an assessment of the evolution of the gender pay gap since 2009, as well as statistics for the number of male and female employees who have respectively been dismissed or who have been put in the "labour reserve". The Committee also asks the Government to provide detailed information on the new public service statute, new job classification and wage scales and on the specific method that has been used for the evaluation of the different jobs with a view to ensuring the application of the principle of the Convention. Please collect and provide information on the distribution of female and male employees in the new job classification and wage scales of the public service.**

*Gender pay gap in the private sector.* The Committee recalls that Act No. 3846/2010 on financial management and responsibility had institutionalized a range of flexible forms of employment including telework, part-time work, subcontracting by temporary employment agencies, rotation work, suspension of work, etc. The Committee also recalls its concern at the reportedly disproportionate impact of the legislative measures regarding flexible forms of employment on women's levels of pay. The Committee notes the statistical information provided by the Government that, in 2011, 47.7 per cent of male workers earned €1,000–€1,599 (compared to 38.7 per cent of female workers), while 48.3 per cent of female workers earned €500–€999 (compared to 38.5 per cent of male workers), and 59.1 per cent of female part-time workers earned up to €499 (compared to 47.3 per cent of male part-time workers). The Committee also notes the Government's indication that the rate of part-time employment increased from 5.6 per cent in 2008 to 6.8 per cent in 2011 (30.65 per cent of the new contracts concluded in 2011 were part-time contracts), and that part-time employment is more widespread among women. The rate of women in part-time employment was 10.2 per cent in 2011, which was higher than the rate of men in part-time employment (4.5 per cent in 2011). The Government also indicates that 84,419 rotation work contracts and 300,230 part-time contracts were signed in 2011. According to the Annual Report 2011 of the Office of the Ombudperson, in 2011, part-time work had increased by 73.25 per cent, rotation work in agreement with parties had increased by 193.06 per cent, while rotation work introduced unilaterally by employers had increased by 631.89 per cent compared to the year 2010. There were 32,420 cases of conversions from full-time to part-time contracts, and 26,542 cases of conversions (among which 7,414 cases of unilateral conversions by employers) from full-time to rotation work contracts in 2011. The Committee further notes the Government's indication that, given the small or very small size of the majority of enterprises, a job classification system pursuant to section 4(2) of Act No. 3896/2010 cannot be applied or can only be applied in a limited manner. **The Committee again asks the Government to take the necessary measures to monitor the evolution and impact of the austerity measures on the remuneration of men and women in the private sector with a view to determining the most appropriate measures to avoid a widening of the gender pay gap and address existing wage differentials between men and women. To this end, the Committee also asks the Government to collect and provide comprehensive information on the following:**

- (i) **statistics disaggregated by sex, showing an evolution of the levels of remuneration of men and women in full-time and part-time employment, in the various economic sectors, industries and occupations, with an indication of the economic sectors and industries most affected;**

- (ii) *the number of men and women, including working mothers returning from maternity leave, who have suffered from pay reductions due to a change in their working arrangements (forms of employment, i.e. part-time work, suspension of work, rotation work or subcontracting by temporary employment agencies) with an indication of the number of workers upon whom the employer has unilaterally imposed the conversion of full-time employment to rotation work or part-time work with lower pay; and*
- (iii) *information, disaggregated by sex, showing the level and evolution of wages of domestic workers and workers in agricultural undertakings.*

*Articles 2(2)(c) and 4. Collective agreements and cooperation with social partners.* The Committee recalls section 29 of Act No. 3896/2010, which provides that the Government is obliged to encourage social dialogue concerning promotion of equality between men and women. It also recalls that, according to the report of the high-level mission, the basic reference wage in Greece is based on the national general collective agreement in force, and no other minimum wage setting mechanism exists. The Committee notes the Government's indication that, pursuant to section 26 of Act No. 3896/2010, trade unions have to inform their members of the legislative and other measures taken to ensure compliance with the principle of equal pay and equal treatment between men and women, while employers have to assist trade unions in this process. ***Recalling that collective agreements have been a principal source of determining rates of remuneration, the Committee refers to its comments on Convention No. 98 and calls upon the Government to bear in mind that collective bargaining is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex. The Committee also asks the Government to provide information on any cooperation with social partners in applying the principle of the Convention, including any activities to raise awareness of the principle of the Convention among workers, employers and their representatives, and the results thereof.***

*Enforcement.* The Committee notes the Government's indication that the authority of the Ministry of Labour and Social Security concerning the principle of equal pay for work of equal value is limited to detecting any violations in the minimum wage setting of the collective agreements, and that no violation has been detected in the collective agreements. The Committee recalls that the labour inspectorate is entrusted with supervision of the legislation on equality between men and women (section 2(2)(g) of Act No. 3996/2011), and notes the Government's indication that there have been no complaints raised concerning equal pay for men and women, or detected by the labour inspectorate. The Committee also recalls that Act No. 3896/2010 strengthens the competencies of the Office of the Ombudperson to address gender equality, including equal pay, and to collaborate with the labour inspectorate, including during mediation, joint inspections and provision of advice. The Committee notes the Government's indication that the labour inspectorate has to inform the Office of the Ombudperson of every complaint filed with it and the findings of the investigation conducted by it, pursuant to section 13(8) of Act No. 3896/2010. It also notes the Government's indication that, pursuant to section 25(7) of Act No. 3896/2010, the Office of the Ombudperson may deal with cases pending before the courts until the first hearing, thereby encouraging victims of discrimination to lodge complaints before the Greek Ombudperson. The Committee refers in this regard to the comments made on the Labour Inspection Convention, 1947 (No. 81), and recalls the importance of adequate training programmes for labour inspectors to increase their capacity to prevent, detect and remedy instances of unequal remuneration between men and women. ***The Committee asks the Government to collect and provide information on the number and nature of cases regarding unequal remuneration addressed by the Office of the Ombudperson, including with the cooperation of the labour inspectorate, as well as information on instances of unequal remuneration between men and women detected and remedied by the labour inspectorate or addressed by the courts, and the results thereof.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1984)***

The Committee notes the Government's reports received on 23 February and 31 August 2012.

The Committee recalls the discussion that took place in the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), concerning the reform of the collective bargaining legal framework in the context of the economic crisis and the impact of austerity measures. It recalls the report of the high-level mission of the ILO which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the International Monetary Fund in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Conference Committee.

*Impact of the measures on the application of the Convention.* Further to its observations on the Equal Remuneration Convention, 1951 (No. 100), the Committee recalls the observations made by the Greek General Confederation of Labour (GSEE) dated 29 July 2010 and 28 July 2011 that: (i) the measures implemented under structural reforms prior to and within the framework of the support mechanism have a direct impact on the application of the Convention; (ii) the reforms are likely to lead to an increase in multiple discrimination on the grounds of gender, ethnic or racial origin, age, family responsibilities or disability; and (iii) the minimum protection level, including wages of some workers such as working women, workers with family responsibilities, workers in flexible forms of employment, and workers not protected by labour law, including domestic workers and workers in agricultural undertakings, is being

significantly weakened. The Committee also recalls that Act No. 3846/2010 on financial management and responsibility, as amended by Act No. 3899/2010, institutionalizes a range of flexible forms of employment. Noting the significant increase in flexible forms of employment, the Office of the Ombudsperson, in its Annual Report 2011, states that it confirms the assumption that, due to or under the pretext of the crisis, many enterprises replaced stable work with precarious work; the percentage of women who took such flexible work as newly recruited or already in employment increased, thereby making gender-based discrimination observed by the Office of the Ombudsperson more visible.

*Articles 2 and 3 of the Convention. Equality between men and women in the public sector.* In its previous comments, the Committee noted that the system of “labour reserve” as a form of retrenchment in the public sector overall, pursuant to Act No. 3986/2011 and Act No. 4024/2011, was likely to have an impact on female unemployment, in particular public sector employees with family responsibilities. The Committee also notes that, while the Government indicates that the percentage of women in posts of responsibility increased since 1996 and reached about 50 per cent in 2009, no updated information has been provided in this regard. ***The Committee asks the Government to take the necessary measures, in cooperation with the social partners and the Office of the Ombudsperson, to monitor closely the impact of the measures taken in the framework of the support mechanism on the employment of men and women in the public sector, so as to address any direct or indirect discrimination based on sex. To this end, the Committee also asks the Government to provide information, disaggregated by sex, on employment in the various occupations of the public sector overall, with an indication of the number of male and female workers who have been placed in the labour reserve, the number of dismissals and the sectors most affected.***

*Equality between men and women in the private sector.* The Committee notes the Government’s indication that the sectors most affected by the economic crisis are the construction and manufacturing sectors, in which men are highly concentrated (in 2011, 95.9 per cent of workers in the construction sector and 75.6 per cent of workers in the manufacturing sector were men). The total number of workers fell by 36.8 per cent in the construction sector and by 22.8 per cent in the manufacturing sector. The Committee also notes the Government’s indication that the rate of part-time employment increased from 5.6 per cent in 2008 to 6.8 per cent in 2011 (30.65 per cent of the new contracts concluded in 2011 were part-time contracts), and that part-time employment is more widespread among women. The rate of women in part-time employment was 10.2 per cent in 2011, which was higher than the rate of men in part-time employment (4.5 per cent in 2011). It also notes the Government’s indication that 84,419 work rotation contracts and 300,230 part-time contracts were signed in 2011. There were 32,420 cases of conversions from full-time to part-time contracts, and 26,542 cases of conversions (among which 7,414 cases of unilateral conversions by employers) from full-time to work rotation contracts in 2011. According to the Annual Report 2011 of the Office of the Ombudsperson, part-time work had increased by 73.25 per cent, work rotation contracts introduced in agreement with the parties had increased by 193.06 per cent, while work rotation introduced unilaterally by the employer had increased by 631.89 per cent compared to the year 2010. Approximately 300 complaints were lodged with the Office of the Ombudsperson concerning discrimination against female workers in the private sector, and the Office of the Ombudsperson observes that women were exposed to indecent conditions of work, especially during pregnancy and after childbirth. In 2011, discrimination related to pregnancy and childcare leave was recorded as the most prominent form of discrimination (about 42.46 per cent and 21.79 per cent, respectively, of total complaints concerning discrimination). The Committee further notes that the strategic objectives of the National Programme for Substantive Gender Equality 2010–13 include the support of women’s employment and economic autonomy. The Government indicates that, under the operational programme “Human Resources Development” 2007–13, a project aims at the promotion of employment for unemployed women with an emphasis on the reduction of occupational segregation, targeting 7,000 unemployed women. In July 2012, overall unemployment was 25.1 per cent, with 29 per cent female unemployment (Eurostat data). However, the Committee recalls the information received from the Office of the Ombudsperson during the high-level mission that a large number of women had joined the ranks of the “discouraged” workers who are not accounted for in the statistics. ***The Committee asks the Government to take the necessary measures, in cooperation with the social partners and the Office of the Ombudsperson, to monitor the evolution and impact of the austerity measures on equality of opportunity and treatment in private sector employment with a view to determining the most appropriate measures to address any direct or indirect discrimination based on sex with respect to access to employment and occupation, terms and conditions of work, and security of employment. To this end, the Committee asks the Government to continue to provide information on the following:***

- (i) ***statistical data, disaggregated by sex, on the number of workers employed in full-time and part-time employment and on the number of workers who have had their working arrangements changed (into part-time work, rotation work, etc.). Please indicate in this regard the number of workers whose full-time contracts have been unilaterally converted by the employer into contracts for reduced-term rotation work; and***
- (ii) ***statistical data, disaggregated by sex, showing an evolution of employment in the various economic sectors, industries and occupations, with an indication of the economic sectors and industries most affected.***

*Impact of the measures with respect to other grounds of discrimination.* The Committee recalls Act No. 3304/2005 on the “Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation”, protecting against discrimination on these grounds in employment and occupation. The Committee also recalls the Integrated Action Plan for the social integration of vulnerable groups (Roma and Greek Muslims), and the Integrated Action Plan for the integration of third-country nationals legally residing in the Hellenic

territory (2007–13). The Committee notes the Government's indication that the objectives of the National Strategy on Roma Integration 2012–20 include developing a supportive network of social intervention in areas including employment and education, and developing social dialogue and consensus through social empowerment and participation of the Roma themselves. According to the Government, the objectives specify that (i) the number of Roma children who register at schools and attend compulsory education should be increased by 2020; and (ii) undeclared work should be reduced, accessibility to the labour market increased and entrepreneurship especially for young Roma strengthened by 2020. In addition, a few actions have been planned under the operational programme "Human Resources Development" targeting the Roma. The Government further indicates that the Ministry of the Interior has prepared a draft national programme for the social integration of the Roma. The Committee also notes the Government's indication that the programmes under "Complete integration of all human resources in a society of equal opportunities" aim at creating jobs for almost 20,000 unemployed persons who belong to vulnerable social groups, including immigrants, repatriates, refugees and individuals with religious and cultural particularities. The Government indicates that in 2010 Greek language learning programmes in certified vocational training centres were implemented, targeting the unemployed, including immigrants and refugees. The Committee further notes that the Annual Report of the Office of the Ombudsperson 2010 points out that the issue of "irregular immigrants" and asylum seekers dominated with increasing intensity; vulnerable groups, such as immigrants or Roma, are affected both directly (by decreasing possibilities or opportunities for survival) and indirectly, as the rest of the population feels insecure and is looking for scapegoats, and as the administration rearranges its priorities according to purely logistical considerations. The Office of the Ombudsperson proposed that immediate steps be taken for recognition of special residence status of the "undocumented" immigrants, as well as for registration and secured employment. ***The Committee asks the Government to indicate the impact of the austerity measures on the employment situation of ethnic and religious minorities such as Roma and Greek Muslims as well as migrant workers who are particularly vulnerable to the impact of the economic crisis, and to indicate the specific measures taken and the progress achieved in this respect. Please also provide information on the impact of the programmes under "Complete integration of all human resources in a society of equal opportunities" on ensuring equal opportunity and treatment in employment and occupation, and any other specific measures taken or envisaged, including those in cooperation with the social partners and the Office of the Ombudsperson, to address discrimination against certain minorities, including Roma and Greek Muslims, as well as migrant workers, on the grounds of the Convention.***

***Enforcement.*** The Committee recalls that Act No. 3896/2010 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation: (i) defines direct and indirect discrimination, and sexual harassment at the workplace; and (ii) mandates the Office of the Ombudsperson to monitor and promote the implementation of the principle of equal opportunities and treatment between men and women in employment and occupation in the public and private sectors, including with the collaboration of the labour inspectorate and the social partners. The Committee notes the statistical data in 2010 provided by the Government on violations of Act No. 3488/2006 and Act No. 1483/1984, including the number of complaints and labour disputes, as well as the outcome of the cases. There were two complaints and two labour disputes for discrimination on the ground of sex, and six complaints and six labour disputes concerning sexual harassment. In this connection, the Committee refers to its comments under the Labour Inspection Convention, 1947 (No. 81), concerning the priority to be given to non-discrimination in the context of the labour inspection. The disproportionate impact of the crisis on women is reportedly exacerbated by the inability of the labour inspectorate to effectively address equality cases; delays in the administration of justice also discourage workers from having recourse to the courts. The Committee notes the Government's indication that, in the context of "awareness and training schemes for the entire public administration and local government in gender equality issues", the Government provides training concerning gender equality issues targeting 453 labour inspectors in the country. ***The Committee asks the Government to continue to provide information on the progress made as well as the obstacles encountered in monitoring and enforcing effectively the application of the non-discrimination and equality legislation. The Committee also asks the Government to provide information on the impact of the activities of the Office of the Ombudsperson, including those in collaboration with the labour inspectorate and the social partners, in promoting and ensuring the application of the Convention. The Committee also asks the Government to provide detailed statistics on the nature and number of violations of the non-discrimination and equality legislation detected by the labour inspectorate based on the grounds of the Convention, as well as complaints handled by the Office of the Ombudsperson and the courts. Please continue to provide information on the training provided for law enforcement officials and the labour inspectorate, and its impact on monitoring and enforcing effectively the principle of the Convention.***

### ***Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1988)***

The Committee notes the Government's reports received on 23 February and 31 August 2012.

The Committee recalls the discussion that took place in the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It recalls the report of the high-level mission of the ILO which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the International Monetary Fund in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Conference Committee.

*Impact of the measures on the application of the Convention.* The Committee notes that the majority of measures in the framework of structural reforms that impact on gender equality, including workers with family responsibilities, have been addressed under the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and it refers to its comments on these Conventions for a more detailed analysis. The Committee recalls the observations made by the Greek General Confederation of Labour (GSEE) dated 29 July 2010 and 28 July 2011 that due to the austerity measures, the burden of family responsibilities on women increased due to gender stereotypes and as a result of uneven sharing between men and women of child and family care responsibilities; and the risk of abusive practices against workers with family responsibilities may also have increased. The Committee notes from the Annual Report 2010, of the Office of the Ombudsperson that the main problems identified in the complaints lodged in 2010 concerning workers with family responsibilities include the following: (i) legislation and collective agreements reflect an obsolete perception of gender roles in family and work with respect to parental leave; (ii) the financial crisis has highlighted and exacerbated an evident setback in protecting women's labour rights; and (iii) in the context of the financial crisis, the public administration tends to interpret the law which governs maternity benefits narrowly.

*Article 4 of the Convention. Leave entitlements.* The Committee recalls that the national general collective agreement and certain sectoral agreements contained provisions aimed at safeguarding the rights of workers with family responsibilities. With respect to the impact of the measures taken in the framework of the support mechanism on industrial relations and collective bargaining, the Committee refers to its comments on Convention No. 98. It notes the Government's indication that section 6 of the National General Collective Labour Agreement 2008–9 provides that all provisions concerning the protection of workers with family responsibilities shall also apply to foster parents, in addition to biological or adoptive parents. The Committee also recalls that section 53(3) of the Civil Servants Code (Act No. 3528/2007) limits the use of the right to childcare leave (reduced working hours or a nine-month period of paid leave) by male civil servants whose spouse is not working, to cases in which the spouse is not capable of caring for children due to serious illness or other disabilities. The Committee notes the Government's indication concerning section 53(2) of Act No. 3528/2007 that when both parents are civil servants, they should state which will use the right to childcare leave. It also notes the Government's indication that pursuant to section 18 of Act No. 3801/2009, maternity leave is extended for multiple pregnancies, and a two-day childbirth leave is provided for fathers, and that pursuant to section 37(4) of Act No. 3986/2011, when both parents are civil servants, both parents are entitled to leave without pay up to a total of five years for raising a child up to the age of 6. The Committee further notes the Government's indication that pursuant to sections 48–54 of Act No. 4075/2012, both working fathers and mothers, as well as adoptive parents, are now entitled to four-months' unpaid leave until the child reaches the age of 6, and biological, adoptive and foster parents are granted unpaid parental leave for nursing their children due to their illness or accident. ***The Committee asks the Government to provide information on the practical application of the provisions concerning leave entitlements for workers with family responsibilities under Act No. 3528/2007, Act No. 3986/2011, and Act No. 4075/2012, including statistical information on the extent to which men and women workers, respectively, make use of family-related leave entitlements both in the private and public sectors.***

*Article 5. Childcare and family services and facilities.* With respect to Act No. 3863/2010 on the “New social security system and relevant provisions”, which increased the pensionable ages for mothers and widowed fathers, the Committee previously asked the Government to provide information on the measures taken to ensure adequate, affordable and accessible childcare services and facilities, as means to assist male and female workers to reconcile work and family responsibilities and to remain in the labour market. The Committee notes the Government's indication that family responsibilities put pressure on women in relation to their working hours, which creates obstacles to their access to employment and their participation in the labour market on equal terms with men, and that the Government intends to provide childcare services and facilities to tackle this issue. Since July 2008, female workers receive a voucher which provides care services for babies, children and persons with disabilities. In the school year 2010–11, 23,013 children were placed in approximately 770 facilities, such as baby-care centres, kindergartens, and centres for children with disabilities. The Government also indicates that in addition to public facilities, there are baby-care centres and kindergartens operated by 36 charity organizations, churches and non-profit organizations, as well as 1,100 private baby-care centres. ***The Committee asks the Government to continue to provide information on the measures taken and the results achieved in providing sufficient, accessible and affordable childcare services and facilities, for both male and female workers, and parents wishing to enter or re-enter the labour force, as well as statistical information on the number of existing childcare facilities (private and public) and their capacity. The Committee also asks the Government to consider providing vouchers for care services to men and women workers with family responsibilities on an equal footing.***

*Articles 6, 7 and 8. Measures to enable re-entry and remaining in the labour market, educational programmes, and termination of employment.* The Committee recalls that Act No. 3896/2010 (section 20) and Act No. 3996/2011 provide specific protection against unfair dismissal and extend to 18 months the period of time during which working mothers cannot be dismissed after their return from maternity leave. It also recalls the information provided by the Office of the Ombudsperson, during the high-level mission, that in particular working mothers returning from maternity leave have been offered part-time and rotation work. The Committee notes the statistical information provided by the Government on the number and rate of workers with children in full-time and part-time employment both in the private and public sectors in 2011. In part-time employment, women constituted 61 per cent of workers with children up to 5 years of age, and

76 per cent of workers with children older than 5 years of age. The Committee also notes the information provided in the Annual Report 2010 of the Office of the Ombudsperson that it has investigated more than 70 complaints by public officials concerning failure to grant nine-months' parental leave to male workers, whose spouse is either self-employed or unemployed. The Committee also notes the information in the Annual Report 2010 that in the public sector, discrimination due to parental leave constituted 21.81 per cent of all discrimination cases, and were mainly regarding the right to parental leave taken by fathers; in the private sector, discrimination due to pregnancy and maternity leave constituted 16 per cent of all discrimination cases. The rate of direct discrimination was 39.5 per cent, which according to the Annual Report 2010 reflected the rapid increase in the number of complaints relating to the dismissal of pregnant women. *The Committee asks the Government to make every effort to ensure that the progress achieved by previous action taken to address the needs of workers with family responsibilities in respect of access to free choice of employment, vocational training, terms and conditions of work and social security, as well as childcare and family services, will not be adversely affected by the financial crisis and the measures taken to address it. The Committee also asks the Government to intensify its efforts to promote a broader understanding of the principle of gender equality and awareness of the rights and needs of workers with family responsibilities, to address gender stereotypes regarding the role of men and women with respect to family responsibilities, and to provide information on any progress made in this respect. The Committee further asks the Government to continue to provide information, disaggregated by sex, on the number of workers with family responsibilities affected by rotation work and part-time work, including working mothers returning from maternity leave whose contracts have been converted into part-time contracts and on whom the employer has unilaterally imposed rotation work or part-time work. Please provide information on cases of direct or indirect discrimination, including termination of employment, concerning family responsibilities that have been addressed by the Office of the Ombudsperson, the labour inspectorate services and the courts.*

## Grenada

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)**

*Discriminatory minimum wage order.* The Committee recalls its previous observations raising concerns regarding the Minimum Wage Order SRO 11 (2002) which specified different minimum wages for female and male agricultural workers, and urging the Government to take steps to ensure that it was revised so as not to establish discriminatory wages. The Committee notes with *satisfaction* that the Minimum Wage Order SRO (2002) has been replaced by the Minimum Wage Order SRO 30 (2011), which came into force on 1 January 2011, and provides a uniform minimum wage for agricultural workers. *The Committee asks the Government to continue to provide information on any changes in the minimum wage orders, and to provide copies thereof, as well as information on their implementation in practice.*

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

## Guinea

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

*Article 1 of the Convention. Prohibited grounds of discrimination. Public service.* The Committee recalls the comments which it has been making for more than 20 years, in which it underlines the need to amend section 20 of Ordinance No. 017/PRG/SGG of 23 February 1987 concerning the general principles of the public service, which prohibit discrimination only on the basis of philosophical or religious views and on the basis of sex, so as to ensure that officials enjoy protection against discrimination on the basis of at least all the criteria set forth in *Article 1(1)(a)* of the Convention. The Committee notes the Government's reference in its report to section 11 of Act No. L/2001/028/AN of 31 December 2001 establishing general regulations for public officials, which states that no distinction may be made among officials on account of their political, trade union, philosophical or religious opinions, or on the basis of their sex or ethnic origin. The Government adds that it considers that section 11 of the general regulations for public officials takes account of *Article 1(1)(a)* of the Convention. However, the Committee notes the Government's indication that it has also duly noted the Committee's observations concerning section 20 of Ordinance No. 017/PRG/SGG and that it will take the necessary steps to amend this section.

The Committee recalls that, even though discrimination against an ethnic group indeed constitutes racial discrimination within the meaning of the Convention, it nevertheless wishes to emphasize that discrimination on the basis of ethnic origin does not cover all aspects of discrimination on the basis of race, colour, or national extraction and, even less so, of discrimination on the basis of social origin. The Committee recalls that the concept of national extraction covers distinctions made on the basis of a person's place of birth, ancestry or foreign origin, and that social origin refers to an individual's membership of a social class, socio-occupational category or a caste, such membership being likely to determine his or her occupational future. *In order to ensure that officials and candidates for employment in the public service are afforded protection against all direct or indirect discrimination on the basis of at least all the grounds of discrimination referred to in Article 1(1)(a) of the Convention, namely race, colour, sex, religion, political opinion, national extraction and social origin, the Committee requests the Government to take the necessary steps to amend the*



*provisions of section 11 of Act No. L/2001/028/AN establishing the general regulations for public officials and section 20 of Ordinance No. 017/PRG/SGG establishing the general principles for the public service, and to supply information on any measures taken towards this end. Pending these amendments and in the absence of legislative provisions to this effect, the Committee requests the Government to indicate the manner in which officials and candidates for employment in the public service are protected against discrimination on the basis of race, colour, national extraction or social origin, indicating in particular whether, and how, cases of discrimination on the basis of the aforementioned grounds have already been dealt with by the competent authorities.*

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

## 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:**

- (i) *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;*
- (ii) *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;*
- (iii) *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*
- (iv) *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.**

## India

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)**

*Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 99th Session, June 2010).* 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, as well as the Government's report. The Conference Committee noted the various measures taken by the Government aimed at women's empowerment, the meeting with the provincial labour ministers in January 2010 to discuss the implementation of the Equal Remuneration Act, 1976, (ERA) and the compilation of data that was being prepared on trends in earnings of men and women in selected sectors. The Conference Committee asked the Government to take measures in several areas, including research on the gender remuneration gap, awareness raising and enforcement of the ERA and the Equal Remuneration Regulations, and objective job evaluation with a view to effectively applying the principle of the Convention. The Conference Committee also called on the Government to avail itself of ILO technical assistance in order to bring its law and practice into full conformity with the Convention.

The Committee notes that a tripartite national workshop on strengthening the implementation of the ERA was organized in New Delhi in February 2012, with the assistance of the Office. The main objective was to identify action to be taken by the labour institutions and other relevant stakeholders towards strengthening the effectiveness of the ERA, in line with the principles of the Convention. At the conclusion of the workshop, recommendations were proposed in the areas of research and data collection, proactive measures and legislation, which were to be presented to the Inter-ministerial Task Force for Gender Equality for follow-up. **The Committee asks the Government to provide information on the follow-up given to the recommendations proposed by the tripartite workshop on the ERA.**

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislation.* In its General Survey of 2012 on the fundamental Conventions, the Committee has called on countries that retain legal provisions that are narrower than the principle laid down in the Convention, to amend their legislation. It has done so because narrower provisions that do not give expression to the concept of "work of equal value" hinder progress in eradicating gender-based pay discrimination (see General Survey, 2012, paragraph 679). The Committee recalls that section 39(d) of the Constitution of India only provides for equal pay for equal work for men and women and that section 4 of the ERA requires employers to pay equal remuneration to men and women for the same work or work of a similar nature; section 2(h) of the ERA defines "same work or work of a similar nature" to mean "work in respect of which the skill, effort and responsibility required are the same, when performed under similar conditions, by a man and a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment". In its previous comments, the Committee noted that these provisions were more restrictive than is required to give effect to the principle of equal remuneration for men and women for work of equal value, as set out in the Convention, and that limiting the scope of the legislation to "work of a similar nature" unduly restricts the scope of comparison of remuneration received by men and women.

The Committee recalls that the Government had previously taken the view that amending the ERA was not necessary and that the legal provisions had to be read in conjunction with judicial interpretations. The Committee notes the three decisions of the Supreme Court of India on the application of article 39(d) of the Constitution and the ERA, which, however, continue to define the principle of equal pay in a restrictive manner that does not give full expression to the principle of the Convention. **The Committee urges the Government to take concrete measures to ensure that the legislation clearly establishes the right to equal remuneration for men and women for work of equal value, and asks the Government to provide detailed information on the measures taken and progress achieved in this regard.**

*Assessment of the gender pay gap.* The Committee recalls the significant earnings differentials between men and women, even where they are engaged in the same occupations or where they have the same level of skills or education. The Committee notes from the most recent statistical data provided by the Government that significant differentials remain with respect to the average daily earnings between men and women in the manufacturing sector, the mining sector, the plantation sector, and the service sector (Labour Bureau Occupational Wage Survey). The Committee notes that the Conference Committee had asked the Government to ensure that research undertaken by the Centre for Gender and Labour of the National Labour Institute encompassed an in-depth study into the reasons for the wide gender remuneration gap and the effectiveness and implementation of the ERA with respect to promoting the principle of the Convention. The Government was urged to follow up actively on such research, with the cooperation of employers' and workers' organizations. The Committee notes the Government's indication that the Centre for Gender and Labour has been entrusted with the responsibility of undertaking research regarding the effectiveness and implementation of the ERA. ***The Committee asks the Government to indicate the progress made with respect to research undertaken by the Centre for Gender and Labour into the reasons for the wide gender pay gap, the effectiveness and implementation of the legislation and the impact of the minimum wage legislation on equal remuneration for men and women, as well as the compilation of statistics on wage differentials in the public and private sectors, and in the unorganized sector, and to provide the results of such research. Please also indicate how workers' and employers' organizations are being involved in any such research. The Committee also asks the Government to continue to provide detailed statistical information on the earnings of men and women in the public and the private sectors, and the unorganized sector.***

*Enforcement.* The Committee notes that the Conference Committee shared its concern that only very few violations of the ERA have been detected at the level of state governments, particularly when compared to violations detected in the context of inspections undertaken by the central authorities. The Conference Committee had asked the Government to reinforce awareness raising among workers, employers and their organizations and enforcement authorities throughout the country in respect of the principle of equal remuneration for work of equal value in compliance with the provisions of the Convention, the relevant legal provisions and the avenues of dispute resolution. The Committee notes from the Government's report that the number of inspections undertaken by the authorities at the central level decreased from 3,224 in 2007–08 to 2,779 in 2008–09. In the large majority of cases, violations were identified (2,715), and in 600 cases prosecutions were launched, leading to 320 convictions. It also notes the Government's indication that during 2009–10, 68,700 women benefited from awareness-raising activities on the ERA through the scheme providing "grant-in aid" to voluntary organizations and that the Central Board for Workers' Education under the Ministry for Labour and Employment also organizes training programmes for informal economy workers, particularly rural workers and women workers, with a view to developing awareness on labour protection available under the labour laws. The Committee further notes that the Central Advisory Committee on the ERA was reconstituted in December 2010 and that the first meeting was held in February 2011. ***Noting the Government's statement that strengthening the enforcement of the equal remuneration legislation at the state level will be taken up with the state government and union territory administrations, the Committee urges the Government to take swift action in this respect, and to report on the progress made. The Committee also asks the Government to take more vigorous steps, in cooperation with the workers' and employers' organizations, to disseminate information widely and raise awareness among workers and employers at the central and state levels, including in the unorganized sector, on the relevant national legislation and the avenues for dispute resolution, through the "grant-in aid" scheme for voluntary organizations, the Central Board for Workers' Education, or otherwise. The Committee also asks the Government to provide information on the following:***

- (i) the steps taken or envisaged to undertake an in-depth analysis of the violations detected and research regarding the obstacles encountered and ways and means of improving enforcement by the state authorities of the equal remuneration legislation, including in the unorganized sector;***
- (ii) detailed information on the extent to which the institutions competent to bring complaints under section 12 of the ERA have made use of this possibility, and the outcome of such complaints; and***
- (iii) the activities of the Central Advisory Committee to improve the effective implementation of the ERA.***

*Article 3. Objective job evaluation.* The Committee notes that the Conference Committee urged the Government, in cooperation with workers' and employers' organizations, to take the necessary measures to promote, develop and implement practical approaches and methods for the objective evaluation of jobs with a view to effectively applying the principle of the Convention in the public and private sectors. The Committee notes the Government's statement that the issue was to be discussed during the tripartite workshop on the ERA. The Committee notes that the importance of objective job evaluation to the implementation of the principle of equal remuneration for work of equal value was reaffirmed at the tripartite workshop, including the need to develop technical tools for undertaking objective job evaluation and implementing the principle of equal remuneration for men and women work of equal value. ***The Committee trusts that the Government will take the measures necessary to give effect to Article 3 of the Convention, in the public and private sectors, with a view to promoting the use of objective job evaluation methods as a means of ensuring full application of the principle of the Convention in practice, and to provide information on any further developments 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)***

*Articles 1, 2 and 3 of the Convention. Discrimination based on social origin.* The Committee notes the information provided by the Government regarding the implementation of the quota system for employment by the central and state governments of persons considered to belong to “scheduled castes, scheduled tribes and other backward classes”. The Committee notes from the figures provided by the Government that as of 1 January 2008, persons considered to belong to the scheduled castes (constituting 16.23 per cent of the Indian population according to the 11th Five-Year Plan (2007–12) (“11th Plan”), were represented in central government services as follows: 12.5 per cent in group A; 14.9 per cent in group B; 15.7 per cent in group C; and 19.4 per cent in group D. Total representation of scheduled castes was 16.51 per cent as of 1 January 2008. The Committee recalls that in November 2008, a special recruitment campaign was launched to fill the backlog of reserved vacancies, and notes that no recent statistics have been provided on the representation of scheduled castes for the whole of the reporting period. No new information is at the Committee’s disposal regarding the achievements of the reservation system in state government employment. The Committee understands that the Supreme Court is presently studying the legal implications of denying quota rights regarding jobs in government and educational institutions for Christian and Muslim Dalits, who have so far been excluded from the reservation system. The Committee further notes the information provided by the Government on the implementation during 2009–10 of the various schemes and programmes aimed at educational, economic and social empowerment of the scheduled castes, including a new Centrally-sponsored Scheme “Pradhan Mantri Adrash Gram Yojana (PMAGY)” initiated during 2009–10 on a pilot basis in 1,000 villages having more than 50 per cent of the population belonging to scheduled castes. However, from the information provided it appears that for some of these programmes and schemes the level of expenditure or the number of participants or beneficiaries covered has decreased. The Committee regrets, however, the absence in the Government’s report of information regarding steps taken to complement protective legislation with “promotive legislation which covers the rights of scheduled castes with respect to education, vocational training, higher education and employment”, or any affirmative action measures, in particular for the private sector as foreseen under the 11th Plan, or regarding any awareness-raising campaigns on the prohibition or unacceptability of caste-based discrimination in employment and occupation. ***Recalling that discrimination in employment and occupation against men and women due to real or perceived belonging to a certain caste is unacceptable under the Convention, and that continuing measures are required to end any such discrimination, the Committee urges the Government to provide information on the specific measures taken to launch and intensify awareness-raising campaigns on the prohibition and unacceptability of caste-based discrimination in employment and occupation, including on the steps taken to seek the cooperation of the workers’ and employers’ organizations in this regard. The Committee further requests the Government to provide information on the adoption and implementation of any new measures, including any legislative measures referred to under the 11th Plan or any affirmative action measures, and to provide comprehensive and up-to-date information on the results achieved and the impact of the various existing schemes and programmes with respect to equality of opportunity and treatment of persons belonging to the scheduled castes, including the reservation system for the public service at the central and state levels. Further, the Committee requests the Government to provide information on the outcome of the Supreme Court decision with respect to the denial of quota rights of Dalit Muslims and Dalit Christians under the reservation system, and any follow-up thereto.***

With regard to the enforcement of protective legislation, the Committee notes the information in the Government’s report regarding the cases handled by the police and the special courts regarding the application of the Protection and Civil Rights Act, 1955 (PCR Act), and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act), which provide for the punishment of the practice of untouchability. According to the statistical information provided by the Government on the cases handled by the police and the courts during 2008, the total number of court cases regarding scheduled castes under the PCR Act was 1,876, only 55 of which resulted in a conviction (compared to 2,613 cases and 63 convictions in 2007). With respect to the POA Act, the Government’s report indicates that there were 104,898 cases before the courts in 2008, out of which 6,688 resulted in a conviction (compared to 104,003 cases and 6,505 convictions in 2007). Statistics however continue to suggest that under both Acts large numbers of cases remain pending before the courts. The Committee further notes that the “Committee for effective coordination and ways and means to curb offences of untouchability and atrocities against scheduled castes and scheduled tribes and effective implementation of both Acts” has so far held nine meetings (the last one in February 2010), and reviewed 25 states and four Union Territories. ***Noting the large number of pending cases and the decreasing number of convictions, the Committee requests the Government to take additional steps to ensure the strict enforcement of the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by the special police and special courts, including measures mentioned in the 11th Plan such as capacity building and awareness raising of the judiciary, public prosecutors and police to reduce the backlog and delays in the administration of cases in courts and to speed up the issuing of judgments. The Committee also requests the Government to make every effort to collect and provide more up-to-date statistics on the number and outcome of the cases handled by the competent authorities. Recalling that the State and District Level Vigilance and Monitoring Committees review the implementation of the POA Act and PCR Act, the Committee requests the Government to provide information on the specific activities of these Committees.***

*Manual scavengers.* For many years, the Committee has been conducting a dialogue with the Government regarding the practice of manual scavenging and the fact that Dalits, and very often Dalit women, are usually engaged in this practice due to their social origin, in contravention of the Convention. The Committee recalls that the 11th Plan referred to 342,000 remaining manual scavengers, while the Government previously reported that a total of 138,464 manual scavengers were still to be liberated under the Integrated Low Cost Sanitation (ILCS) Scheme as of 31 March 2009. The Committee had expressed serious concern that, despite the efforts taken by the Government, thousands of Dalit men and women still found themselves trapped in this inhumane and degrading practice. The Committee has been particularly concerned at the apparent weak enforcement of the Employment and Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 and at the fact that the practice even continued in employment under the Government's authority contrary to *Article 3(d)* of the Convention. The Committee notes that, according to the Government's report, the 1993 Act so far has been adopted by 23 states and all union territories. Two states report that they do not have dry latrines and that they are scavenger free; two states have adopted their own legislation on the subject. With regard to enforcement of the Act, the information in the Government's report indicates that only the State of Uttar Pradesh has reported that 32,314 cases of prosecutions have been filed in the Judicial Magistrate's Court since 10 April 2010 and that a fine has been imposed in 5,206 cases. Other states merely report that the State is either scavenger-free, that no cases have been reported or that the issue is not applicable in that State.

The Committee notes the ILO Project on the Promotion of Equality at Work in India which aims to support the central and state governments, workers' organizations and civil society organizations in their efforts to eradicate manual scavenging and promote equality in employment for caste-based excluded communities like the Valmikis. It notes in this context that research and consultative meetings have been carried out at regional and national level with a view to supporting efforts by the Government to eradicate manual scavenging by the end of 2012, as foreseen in the 11th Plan. The Committee notes that the National Advisory Council (NAC) was reconstituted in March 2010 to provide policy advice and legislative suggestions to the Government with a special focus on social policy and the rights of excluded groups (Order 631/2/1/2004.Cab of 31 May 2004 and Order 1/3/2/2010.Cab of 29 March 2010). In a Resolution on Manual Scavenging of 23 October 2010, the NAC expressed concern at the persistence of manual scavenging in India, the poor implementation of the legislation and rehabilitation schemes, in particular the Self-Employment Scheme for the Rehabilitation of Manual Scavengers, and urged the various relevant departments of central government, including Railways, to abolish the practice by the end of the 11th Plan period. The Committee also notes that the NAC made proposals regarding further follow-up steps to be taken by the Government, including the adoption of new legislation, a new nationwide survey involving government officials and civil society to collect accurate data on remaining dry latrines and manual scavengers, the demolition of all dry latrines, improved access requirements to rehabilitation schemes of manual scavengers, especially women, and their families, and a specific programme for the education of children of families presently or previously engaged in manual scavenging. The Committee also understands that the Supreme Court of India has issued orders condemning certain practices faced by government contract workers, in particular members of the Valmiki community.

In addition, the Committee notes that in June 2010 the Ministry of Labour and Employment established a Task Force on Sanitation and Leather Workers which was to develop a social security scheme and propose new legislation covering all forms of manual scavenging. The Task Force drafted a new bill for sanitation workers entitled "Sanitation Workers (Regulation of Employment and Conditions of Service) Bill". The Committee also notes that the Government again expressed its commitment to eliminating the practice of manual scavenging in the Approach Paper to the 12th Five-Year Plan (2012–17) "Faster, Sustainable and More Inclusive Growth" of the Planning Commission (October 2011), and has proposed the Prohibition of the Employment as Manual Scavengers and their Rehabilitation Bill, 2012 to strengthen accountability mechanisms and widen the definition of manual scavenging. The Committee understands that the Ministry of Social Justice and Empowerment constituted in April 2012 a Committee for recommending modalities for conducting a Survey of Manual Scavengers and their dependents, taking in consideration the data available from the 2011 Census and the Socio-Economic Caste Census (Order No. 190/12/2011-SDC-IV). ***While taking due note of the Government's expression of commitment to ending the practice of manual scavenging, the Committee requests the Government to take vigorous and comprehensive measures to combat caste-based discrimination and end the degrading and inhumane practice of manual scavenging by the set target date. The Committee also requests the Government to provide information as follows:***

- (i) *the results of the 2011 Census and the Socio-Economic Caste Census with respect to the existence of dry latrines and manual scavengers;*
- (ii) *the concrete follow-up given to the proposals made by the National Advisory Council, in particular the Survey on Manual Scavenging and measures to address the gaps and to improve the effectiveness of the rehabilitation schemes, particularly for women beneficiaries, and the education programme for children of manual scavengers;*
- (iii) *any developments regarding the adoption of the Prohibition of the Employment as Manual Scavengers and their Rehabilitation Bill, 2012 and the Sanitation Workers (Regulation of Employment and Conditions of Service) Bill;*
- (iv) *any relevant orders or decisions by the Supreme Court relating to caste-based discrimination involving manual scavengers, including the Supreme Court Order regarding government contract workers; and*

- (v) *any other measures taken in the context of a multifaceted approach designed to promote equality of opportunity and treatment irrespective of social origin and address caste-based discrimination, including awareness raising for manual scavengers of their rights, avenues for redress, rehabilitation schemes and programmes providing alternative livelihoods; educational programmes addressing the general public and local government bodies and law enforcement officials on caste-based discrimination.*

*Equality of opportunity and treatment of women and men.* The Committee notes from the information provided in the Government's report that the implementation of the Mahatma Ghandi National Rural Employment Guarantee Act, 2005 (MGNREGA), which provides for employment guarantee schemes and an unemployment allowance, covers the entire country and that employment guarantee schemes are operational in 618 districts. Women's participation in the schemes has been steadily rising from 41 per cent in 2006–07 to 48 per cent during 2008–09. By the end of 2010, the overall participation of women was 49 per cent although significant differences in participation rates exist between states (ranging from less than 20 per cent to over 80 per cent participation of women). With regard to training, the Committee notes the general information provided by the Government on the trades and skills offered to women by the network of National and Regional Vocational Training Institutes (NVTI and RVTIs), many of which have a tendency to lead to jobs and occupations traditionally considered "suitable" for women. The Planning Commission is also considering a proposal for setting up twelve more institutes exclusively targeting vocational training requirements of women in the country. The Committee draws the Government's attention to the fact that gender stereotypes regarding women's aspirations, preferences and capabilities with respect to certain trades and skills continue to be an underlying issue affecting the application of the Convention. Providing vocational guidance and taking active measures to promote access to education and training, free from considerations based on stereotypes or prejudices, is therefore essential in broadening the range of occupations from which men and women are able to choose, and in achieving gender equality in the labour market (General Survey on fundamental Conventions, 2012, paragraph 750). *The Committee requests the Government to continue to provide information on the implementation of MGNREGA, including information on the percentage of women participating in the schemes who have been provided with work, or with an unemployment allowance, including women of scheduled castes and tribes, "other backward classes" and minorities. The Committee also requests the Government to provide information, disaggregated by sex, on participation rates in the various vocational training courses offered by the NVTI and the RVTIs, and on the measures taken to ensure that the vocational training courses offered to women are free from considerations based on stereotypes or prejudices.*

The Committee had previously noted from the 11th Plan (paragraphs 4.41–4.46) that the labour force participation of women remained much lower than that of men and that in urban areas unemployment was much higher for young women than for men in the corresponding age group in both the unorganized and the private sectors. The Committee notes that the Government in a very general manner refers to the objectives of the 11th Plan, without providing information on the concrete measures taken to promote equality of opportunity and treatment in employment and occupation in the public and private sectors, as requested by the Committee. The statistical data provided by the Government on literacy rates, attendance in educational institutions, and employment, relate to the period of 2005–06. *Noting that the 12th Five Year Plan (2012–17) is being developed, the Committee requests the Government to indicate the specific measures foreseen under the Plan to promote and ensure equality of opportunity in employment and occupation between men and women, in rural and urban areas, as well as the private, public and unorganized sectors. The Committee requests the Government to provide all relevant information on the results achieved under the 11th Plan with respect to action taken to promote women's equal access to employment in the organized and public sectors, as well as government services. The Committee also requests the Government to make the necessary efforts to collect and provide more recent and relevant statistical information on the participation of men and women in employment, according to sector and employment status, if possible, allowing an assessment of the progress made over time.*

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)***

*Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 99th Session, June 2010).* The Committee refers to the discussion that took place in the Conference Committee on the Application of Standards in June 2010 and the resulting conclusions. The Committee recalls that the Conference Committee had urged the Government to amend the discriminatory laws and regulations, and to bring the practice into line with the Convention, including regarding the role of female judges, the obligatory dress code, the application of social security regulations, hiring women over 40, and women's access to the labour market. It also called on the Government to expressly repeal section 1117 of the Civil Code, to promote public awareness of the right of women to pursue freely any job or profession, the inclusion of women in the labour market and decent work for women. It also urged the Government to take decisive action to combat discrimination against ethnic minorities and unrecognized religious minorities, in particular the Baha'i. The Conference Committee also expressed concern that in the context of the

lack of freedom of workers' organizations, meaningful social dialogue on the implementation of the Convention would not be possible.

*Discrimination based on sex. Discriminatory laws and regulations.* For a number of years the Committee, as well as the Conference Committee, have been raising concerns regarding laws and regulations that discriminate against women, urging the Government to amend or repeal them. The Committee notes with *deep regret* that no concrete results in this regard have been achieved. The Committee notes that the committee established in April 2010 to which the Government referred previously, with the aim of reviewing the laws and regulations that could be in conflict with the Convention, does not seem to have had any impact in bringing about the necessary changes, as the Government again refers only generally to the mandate of this committee. The Committee also notes that the Government refers generally to proposals for amendments to the Labour Law by the Centre for Women and Family Affairs with a view to addressing legal obstacles to women in different areas. The Committee notes the Government's indication that section 1117 of the Civil Code, which provides that a husband can prevent his wife from taking up a job or profession, has still not been repealed. The Government previously referred to proposals made for its repeal in 2006 and 2008, and the Government indicates that another proposal was made in 2010, which also does not appear to have been successful. With regard to the discriminatory provisions in social security regulations that favour the husband over the wife for pension and child benefits, the Committee notes that no specific information is provided.

While welcoming the Government's indication that the number of female judges has increased, the Committee also notes that the Government does not address the issue of giving women access to all positions in the judiciary, including those qualified to hand down judgments, and no steps appear to have been taken to address these limitations in the 1982 Law on the selection of judges and Decree No. 5080 of 1979. Regarding the obligatory dress code, the Committee notes the Government's acknowledgement that observance of the Islamic code of dress is established in the Constitution. The Committee notes the concerns raised by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran that "strict implementation of the morality code concerning dress and attempts to criminalize improper veils have limited women's participation in public and social arenas." (A/66/374, 23 September 2011, paragraph 56). The Committee remains concerned that such a restriction could have a negative impact on the employment of non-Islamic women and to their access to education (see General Survey on fundamental Conventions, 2012, paragraph 800).

The Committee recalls that the primary obligation of ratifying States is 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 all discrimination in respect thereof (*Article 2 of the Convention*). Some concrete measures are immediately required under the Convention, including repealing any statutory provisions and modifying any administrative instructions or practices that are discriminatory or inconsistent with promoting equality in employment and occupation (see General Survey, 2012, paragraphs 841–844). ***Given that the Committee has for many years urged the Government to repeal or amend the discriminatory laws and regulations, and given that this is an immediate obligation under the Convention, the Committee strongly urges the Government to take concrete and immediate steps to ensure the repeal, effective amendment or modification of all laws, regulations, instructions or practices that hinder women's equality of opportunity and treatment in employment and occupation, including with respect to section 1117 of the Civil Code, the social security regulations, the role of female judges, and the obligatory dress code. Noting the Government's reference to the Bill for early retirement of householder women, the Committee asks the Government to review the Bill to ensure that it does not exert a negative impact on women's career paths or access to higher level positions, or result in women receiving a lower pension than men, and to provide specific information in this regard.***

*Discriminatory practices.* With respect to the limitations on employing women over 40, the Government indicates that the maximum age for employment for both men and women is 40, though an extension of five years can be granted. The Committee recalls that there appear to be obstacles in practice to women being hired after the age of 30. In response to the Committee's concerns regarding the prevalence of discriminatory job advertisements, the Committee notes the Government's indication that such advertisements, published by the Government and the private sector, are motivated by professional needs and qualifications, and that the Government cannot interfere in this regard. The Committee recalls that limiting applications to only men or only women for a particular job is discriminatory, unless being a man or a woman is an inherent requirement of the particular job, in the strict sense of the term, as provided in *Article 1(2)* of the Convention. The Committee recalls that there will be very few instances where distinctions based on sex may be required, for example jobs in the performing arts or those involving physical intimacy (General Survey, 2012, paragraphs 827–830). ***The Committee urges the Government to take measures to prohibit discriminatory job advertisements, and to ensure such prohibition is enforced. The Committee also requests the Government to provide information on the actual age profile of the workforce, in the public and private sector, disaggregated by sex, and asks the Government to take measures to ensure that there are no obstacles in practice to women being employed after the age of 30.***

*Discrimination based on religion and ethnicity.* Noting the general information provided by the Government regarding measures taken to benefit certain ethnic and religious groups, the Committee notes with *deep concern* that the Government does not address the very serious concerns that have been raised for many years regarding discrimination against unrecognized religious minorities, in particular the Baha'i and the urgent need to take decisive action to combat such discrimination. The Committee recalls the concerns raised by Education International (EI) regarding religious-based discrimination against the Baha'i in access to education, universities and to particular occupations in the public sector. The

Committee notes that the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran acknowledges that “Baha’is are subjected to severe socio-economic pressure ... in some cases, they have been deprived of property, employment and education”. He also refers to the establishment of an office to counteract Baha’i publications, the denial of positions of influence to Baha’i and prohibiting them from carrying out certain trades. He also states that ethnic minorities “continue to be subjected to intense socio-economic discrimination and pressures, including land and property confiscation, denial of employment and restrictions on social, cultural and linguistic rights” (A/HRC/19/66, 6 March 2012, paragraphs 61–62). The Committee notes further that the Special Rapporteur states that the practice of *gozinesh*, a selection procedure requiring state officials and employees to demonstrate allegiance to the state religion, has further alienated ethnic minorities (ibid., paragraph 65). ***The Committee must once again urge the Government to take decisive action to combat discrimination and stereotypical attitudes against religious minorities, in particular the Baha’i, through actively promoting respect and tolerance for religious minorities, to repeal all discriminatory legal provisions, including regarding the practice of gozinesh, and withdraw all circulars and other government communications discriminating against religious minorities. The Committee also calls on the Government to ensure that religious minorities, including unrecognized religious minorities, in particular the Baha’i, as well as ethnic minorities, are protected against discrimination, and have equal access and opportunities, in education, employment and occupation, in law and practice. The Committee asks the Government to take concrete measures to this end, and to provide detailed information of the measures taken and the results achieved. The Committee also asks the Government to provide further information on the progress made in developing an index of ethnic justice to which the Government refers, the indicators established, and any conclusions or findings arising from the index.***

*Discrimination based on political opinion.* The Committee recalls the observations of EI raising concerns of persecution and prosecution of teachers, students and trade unionists advocating for social justice, for equal rights to education and employment and for women’s rights. The Committee notes that the Government in its brief reply to this allegation states that the activities of the association of teachers to which EI had referred, had a political nature. The Committee recalls that the protection against discrimination on the basis of political opinion under the Convention implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions and also covers discrimination based on political affiliation. The protection of political opinion applies to opinions which are either expressed or demonstrated, but does not apply where violent methods are used (General Survey on fundamental Conventions, 2012, paragraph 805). The Committee also recalls that the protection of freedom of expression is aimed not merely at the individual’s intellectual satisfaction at being able to speak his or her mind, but rather – and especially as regards the expression of political opinions – at giving him or her an opportunity to influence decisions in the political, economic and social life of the society; for political views to have an impact, the individual generally acts in conjunction with others (General Survey on equality in employment and occupation, 1988, paragraph 57). ***The Committee requests the Government to take measures to ensure that teachers, students and their representatives enjoy protection against discrimination based on political opinion and requests the Government to provide information on the specific measures taken in this respect.***

*Legislative and policy framework for equality and non-discrimination.* The Committee previously noted that the Bill on Non-discrimination in Employment and Education had been submitted to the Commission of Social Affairs of the Cabinet of Ministers. The Committee had noted with concern that the Bill did not provide effective and comprehensive legal protection for all workers against discrimination in employment and occupation on all the grounds enumerated in the Convention, and urged that steps be taken to bring it into line with the Convention. The Committee notes the Government’s indication that the Bill remains with the Commission of Social Affairs, and will be forwarded once it has been approved. On the issue of providing legislative protection against sexual harassment in employment and occupation, the Committee notes that the Government considers that individuals respect social norms proportional to the “necessities of the society and regular behaviour”, and indicates that no case of sexual harassment in the workplace has been reported. With respect to the concerns raised regarding the increasing number of women working in temporary jobs and under contract employment, thus being excluded from legal entitlements and facilities, including maternity protection, the Committee notes the Government’s indication that all gaps regarding the protection of mothers will be considered in the process of the amendment of the Labour Law. ***The Committee once again urges the Government to ensure that effective and comprehensive legal protection for all workers, whether nationals or non-nationals, against direct and indirect discrimination, on at least all the grounds enumerated in the Convention, namely race, colour, sex, religion, political opinion, national extraction and social origin, with respect to all aspects of employment and occupation. The Committee asks the Government to review the procedures that would be available to bring a claim for a violation of the provisions concerning discrimination, to ensure they provide effective and accessible avenues for redress. The Committee urges the Government to take effective measures, in law and in practice, to prevent and prohibit both *quid pro quo* and hostile environment harassment in employment and occupation. The Committee also asks the Government to provide information on the progress of amending the Labour Law with a view to ensuring that women in temporary and contract employment benefit from all entitlements and facilities.***

The Committee notes the adoption of the Act of the Fifth Economic, Social and Cultural Development Plan (2011-15) of 20 January 2011 (Act of the 5th Development Plan), and the National Plan of Decent Work, 2010, which were attached to the Government’s report. The Committee notes that the Act of the 5th Development Plan does not appear to address equality and non-discrimination in employment and occupation. With respect to the National Plan of Decent



Work, the Committee notes that the objectives of the Plan include fundamental labour rights, including prohibition of discrimination in employment and occupation; “equalizing opportunities” for men and women, and enabling women to take advantage of suitable job opportunities; and reforming laws and regulations to comply with international conventions. The Committee notes that the Plan is very general in nature, and no specific measures are set out to address the objectives listed. ***The Committee asks the Government to provide information on the measures taken in the context of the National Plan of Decent Work, or otherwise, in line with Article 2 of the Convention, to declare and pursue a national policy designed to promote equality of opportunity and treatment in employment and occupation, with a view to eliminating any discrimination based on all the grounds enumerated in the Convention, and the impact of such measures.***

***Equality of opportunity and treatment between men and women.*** The Committee notes the Government’s indication that the labour force participation of women increased from 12.6 per cent in the fourth quarter of 2009 to 16 per cent in the first quarter of 2010. According to the statistics provided by the Government, women’s labour force participation rates from 2007 to 2010 fluctuated regularly within a band of 12.3 per cent to 16.7 per cent. The Committee also notes the increase in women’s unemployment in 2010 to 25 per cent, from 16.8 per cent in 2009. The Committee notes the range of measures reported by the Government with a view to improving women’s access to education and training, as well as the Government’s acknowledgement that this education and training is not translating into the same labour market access for women as for men. The Government states that the difference in access to the labour market is due to social and cultural reasons, mainly based on traditional interpretations, which the Government considers are justified. The Committee notes the continuing efforts made to promote women’s entrepreneurship, including the establishment of the Foundation of Cooperative and Development of Women’s Entrepreneurship. The Committee also notes the Government’s indication that it will submit updated information on the measures adopted by the Cultural and Social Council of Women in the near future, and looks forward to receiving such information once it is available. ***The Committee asks the Government to take concrete steps to ensure that women’s education and training opportunities translate into jobs, including those with a career path and higher pay. In this context, the Committee urges the Government to address stereotyped assumptions regarding women’s aspirations, preferences and capabilities regarding employment. The Committee also asks the Government to continue to provide information on activities to promote women’s empowerment and women’s entrepreneurship, and the impact of such measures. Please also provide more detailed information on the contents and progress of the adoption of the Bill on home-based work and the Family Protection Bill, including a summary of the provisions of relevance to the Convention. The Committee again asks the Government to provide information on the quota system in universities and how this is applied in practice. Please also continue to provide information on the participation of women and men respectively in education, vocational training, and provide information on the distribution of men and women in the various sectors and occupations of employment.***

***Enforcement.*** The Committee notes that the Government provides information on the number of cases of alleged violations of citizenry rights, including discrimination against religious and ethnic minorities, that were heard in different provinces (a total of 5,926 cases). However, it is not clear during what period or in which court or other proceedings these complaints were heard, whether they related to discrimination in employment and occupation, or what was the outcome of the cases. The Government also refers to the General Inspection Organization, which monitors, inspects, and deals with complaints. The Government also refers to the establishment of tripartite reconciliation councils, which settled 30 per cent of complaints in 2011. It is not clear if any complaints of discrimination have been addressed in this context or by the General Inspection Organization. The Committee also notes the Government’s indication that no cases of discrimination in employment against women have been reported. The Committee recalls that the absence of complaints of discrimination is likely to indicate a lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals (General Survey, 2012, paragraph 870). ***The Committee asks the Government to provide further information on the number and nature of complaints addressed relating to the principle of the Convention, by the labour inspectorate, the courts, and any administrative bodies, and the remedies provided and sanctions imposed. Noting that the Government refers to the establishment of special courts for religious minorities to issue verdicts according to their religious rights, the Committee asks the Government to provide information on the number and nature of complaints of discrimination addressed by these courts and the outcome thereof. The Committee also asks the Government to take concrete measures to increase awareness of workers, employers and their organizations of the principle of the Convention and the complaints procedures available for discrimination. The Committee also calls on the Government to take steps to train all those involved in monitoring and enforcement to increase their capacity to identify and address cases of discrimination in employment and occupation.***

***Social dialogue.*** While noting the Government’s general reference to measures taken to promote social dialogue, the Committee remains concerned that national-level social dialogue regarding the implementation of the Convention remains impeded, including in the absence of an appropriate legal framework for freedom of association and social dialogue. The Committee notes that the Government refers to the ongoing process of amending the Labour Law in this context. However, the amendments have not yet been adopted. The Committee notes that the Government requests ILO technical assistance in this regard. ***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, and to provide detailed information of steps taken in this regard. The Committee also asks the***

*Government to take the necessary steps to secure ILO technical assistance, including forwarding a copy of all relevant draft legislation and amendments to the Office for comments and advice.*

*[The Government is asked to supply full particulars to the Conference at its 102nd Session and to reply in detail to the present comments in 2013.]*

## Ireland

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1999)

*Articles 1 and 2 of the Convention. Equality of opportunity and treatment for men and women.* The Committee recalls that article 41.2 of the Constitution provides that “the State recognizes 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”. In its previous comments, the Committee expressed concern that these provisions might encourage stereotypical treatment of women in the context of employment, contrary to the Convention, and it requested the Government to consider reviewing them. The Committee notes the Government’s indication that the Programme for the Government of National Recovery 2011–16 includes a commitment to establishing a Constitutional Convention to consider comprehensive constitutional reform, with a mandate to consider, among others, amending “the clause on women in the home” and encouraging greater participation of women in public life. According to the Programme, a report is to be established within 12 months on this issue, among others. ***The Committee hopes that the Government will be able to report progress in the near future concerning the 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 for men and women in employment and occupation, and asks the Government to provide information on any developments in this respect. Please provide detailed information on the establishment of the Constitutional Convention, and provide any report or recommendations adopted on the revision of article 41.2 of the Constitution and any follow-up thereto.***

*Article 1(2). Inherent requirements of the job.* In its previous comments, the Committee recalled that section 2 of the Employment Equality Act excludes from the scope of the Act with respect to access to employment “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”. Under section 2, 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”. The Committee pointed out that the definition of personal services affecting private or family life appears to be broad and non-exhaustive, and open to extensive interpretation. It noted 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 discriminatory grounds listed in section 6(2) of the Act – gender, marital status, family status, sexual orientation, age, disability, race, membership of the Traveller community – without such decisions being considered discriminatory. The Committee notes that in its report the Government refers once again to the need to balance the competing rights to respect private and family life and to equal treatment and that it reaffirms that the exclusion only applies to the access of domestic workers to employment. According to the Government, there is the possibility for a tribunal or a court to construe and apply the relevant provisions in a manner consistent with the human rights of the employer, employee and recipient of such personal services. The Committee recalls that the Convention is intended to promote and protect the fundamental right to non-discrimination and equality of opportunity and treatment in employment and occupation of all workers and that it only allows for exceptions to the principle of equal treatment in so far as they are based on the inherent requirements of a particular job. The Committee recalls that there are very few instances where the grounds listed in the Convention actually constitute inherent requirements of a job and exceptions relating to inherent requirements should be interpreted restrictively and on a case-by-case basis. Overly broad exceptions in equality legislation excluding domestic workers from the protection of discrimination in respect of access to employment may lead to discriminatory practices by employers against these workers, contrary to the Convention (see General Survey on fundamental Conventions, 2012, paragraphs 827–831). ***The Committee therefore requests the Government to take steps to amend 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 the inherent requirements of the job, as strictly defined.***

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

## Israel

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1965)**

The Committee notes the communication, received 25 July 2011, from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) on behalf of the Philippines National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN) and the Government’s reply thereto received 12 September 2011.

*Application of the principle to caregivers.* The Committee refers to its previous observation on the Migration for Employment Convention (Revised), 1949 (No. 97), in which it had noted IUF's concerns regarding the possible discriminatory impact of the decision of the High Court of Justice in *Yolanda Gloten v. the National Labour Court* (HCJ 1678/07) of 29 November 2009, excluding the application of the Hours of Work and Rest Law 1951, including provisions on overtime pay, to a foreign women worker providing care on a live-in basis. In this observation, the Committee also noted the Hours of Work and Rest Law 1951 (sections 30(A)(5) and (6)) as well as the Government's reply that the exceptions set out in the Hours of Work and Rest Law on which the High Court of Justice was relying, apply to all caregivers, whether local or foreign workers. It had also noted that 54,000 foreign workers were employed in care giving, eighty per cent of whom were women, and that few Israeli workers were willing to provide care on a live-in basis. The Committee notes from the Government's most recent report on Convention No. 97 that there are more female Israeli care workers than foreign care workers in the long-term nursing sector (63,000), but these are mostly employed in part-time jobs through nursing care companies. The Government further indicates that following the High Court's acknowledgement of the need for an appropriate clear legislative framework guaranteeing adequate pay and favourable working conditions, a governmental staff committee was set up to submit recommendations to the relevant ministers within the coming months; a further hearing would then take place in the High Court of Justice. The Committee recalls that the Convention applies to all workers, whether nationals or migrant workers, and that the principle of equal remuneration for men and women for work of equal value applies to the basic wage or salary as well as any additional emoluments, including overtime pay. ***The Committee asks the Government to provide full information on how female caregivers, foreign and national, are able to enjoy equal remuneration for work of equal value with male workers, national or foreign, in law and in practice. Noting that a governmental staff committee will submit recommendations, the Committee asks the Government to expedite this process and ensure that caregivers, whether working part-time or on a live-in basis, are not discriminated against on the basis of sex and that the principle of equal remuneration for men and women for work of equal value is fully applied to them, including with respect to overtime pay. The Committee asks the Government to provide information on the specific recommendations made, as well as on the outcome of the further hearing in the High Court of Justice. Please include information on any complaints submitted by female foreign and national caregivers with the different authorities, indicating the nature of the complaint and the outcome thereof.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)***

The Committee notes the communication from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) on behalf of the Philippines National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN) and the Government's reply thereto. The Committee refers in this regard to its comments on the Equal Remuneration Convention, 1951 (No. 100), and the Migration for Employment Convention (Revised), 1949 (No. 97).

*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 in 2009, unemployment rates of the Arab Israeli population (representing 20 per cent of the population) while decreasing, reached 8.5 per cent (compared to 7.6 per cent for the Jewish population in 2009 and 6.8 per cent in 2007). The unemployment rate of Arab women remained at 10.1 per cent and labour force participation of Arab women continues to be very low (21 per cent). Ethiopian and Ultra-Orthodox communities also remain underrepresented in more senior and better paid jobs. The Equal Employment Opportunities Commission (EEOC) reported that according to a 2010 survey of the Ministry of Industry, Trade and Labour (MOITAL), overall, 27 per cent of the employees felt discriminated against at work, rising to 39 per cent in the case of Arab employees. Nonetheless, as was noted previously, only a limited percentage of the 643 inquiries received by the EEOC during 2010 related to discrimination on the grounds of nationality (2 per cent) or descent (2 per cent). A 2011 MOITAL survey on private sector managers indicated that between 35 to 40 per cent of the managers found that Arabs, Ethiopians and mothers of young children were discriminated against in the labour market.

The Committee notes the continued efforts by the Government to improve the situation of the Arab, Druze and Circassian population, with particular emphasis on the employment of Arab women. The Government indicates that most of these initiatives are long-term focusing on development of communities and industrial zones, and that the cultural and social characteristics of each group have to be taken into account. The Committee notes the draft by-laws on the integration of minorities in the high-tech industries aiming at increasing the participation rate of Arab, Druze and Circassian graduates of technological subjects in the knowledge-rich industry, and the initiative under the EEOC strategy and implementation plan 2012–13 to enhance employment equality for Arab men and women in the private sector. It also notes the information on the activities of the Authority for Advancement of the Status of Women and the Authority for the Economic Development of the Arab, Druze and Circassian sectors. ***The Committee asks the Government to provide information on the results achieved including related statistical information, through the implementation of 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. Please continue to provide in this context up-to-date information, disaggregated by sex, on labour force participation, unemployment and employment rates of Druze,***

*Circassians and Arab Israelis and the corresponding rates for other Israelis. The Committee reiterates its request to the Government to provide information on specific measures taken to prevent and address instances of direct and indirect discrimination in employment and occupation against Druze, Circassians, and Arab Israelis, including awareness-raising campaigns, complaints procedures, as well as information on any cases of such discrimination addressed by the courts or the labour inspection service.*

*Civil service.* The Committee notes from the information provided by the Civil Service Commission that in 2010, the percentage of Arabs and Druze who entered the civil service was 11.09 per cent. Among newly recruited women, 7.35 per cent were Arab or Druze, compared to a rate of 16.64 per cent for Arab or Druze men. In the Government ministries and agencies, Arab and Druze represented 7.07 per cent of the total number of workers accepted, and 17.21 per cent of the total workers accepted in the Government health system. However, despite the increasing number of entrants, overall, Arabs and Druze constituted only 7.52 per cent of total civil servants (compared to 6.17 per cent in 2007) in 2010. The Committee notes the flagship initiative to enhance equality, diversity and non-discrimination in public sector recruitment under the EEOC strategy and implementation plan 2012–13. **Recalling the target previously set by the Government that by 2012 at least 10 per cent of all civil servants would come from the Arab, Druze and Circassian population groups, the Committee requests the Government to intensify its efforts to promote and ensure equal access of the Arab, Druze and Circassian population to employment in the civil service, and to provide information on the progress made. Please include, 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 sectors, and the EEOC strategy and implementation plan 2012–13.**

*Foreign caregivers.* The Committee refers to its comments under Convention Nos 97 and 100 regarding concerns expressed by the IUF with respect to the decision of the High Court of Justice in *Yolanda Gloten v. the National Labour Court* (HCJ 1678/07) of 29 November 2009 excluding the application of the Hours of Work and Rest Law 1951 to female foreign workers providing care on a live-in basis. According to the IUF, the *Gloten* judgment facilitates the application of a discriminatory legal regime to the work of women migrants and labour market segregation on the basis of gender and national origin. The IUF indicates that migrant workers are primarily from South and South-East Asia and employed in the construction, agriculture and caregiving sectors. Women represent the overwhelming majority, comprising 80 per cent of the workers in the caregiving sector, which is the largest sector for the employment of migrant workers. The Committee previously noted in its observation on Convention No. 97, that 54,000 foreign workers were employed in caregiving. The Committee notes the Government's reply in its most recent report on Convention No. 97 that more female Israeli care workers than foreign care workers are employed in the long-term nursing sector (63,000), but that they are mostly employed in part-time jobs, through nursing care companies. The Committee recalls that the Convention covers both nationals and migrant workers and draws the Government's attention to the need to ensure that all care workers, including foreign caregivers, are effectively protected against discrimination in employment and occupation on the grounds set out in the Convention, including with respect to their conditions of work. **Noting that a governmental staff committee will submit recommendations regarding an appropriate legislative framework guaranteeing adequate pay and favourable working conditions for caregivers, after which a hearing will take place in the High Court of Justice, the Committee asks the Government to expedite this process and make every effort to ensure that female foreign workers are not being directly or indirectly discriminated against on the basis of sex, race, colour or national extraction. Please provide information on the recommendations made by the governmental staff committee and on the outcome of any new hearing by the High Court of Justice. The Committee also asks the Government to include information on complaints submitted by female foreign and national caregivers with the EEOC, the courts or other competent authorities, and their outcome, regarding non-respect of the discrimination principle set out in the national legislation and the Convention.**

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

## Italy

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)**

The Committee notes the observations of the Italian General Confederation of Labour (CGIL) received on 30 September 2011 and of the Italian Union of Labour (UIL) received on 5 October 2011, as well as the Government's reply to these communications received on 7 November 2011.

*Articles 1 and 2 of the Convention. Discrimination on the basis of sex. Pregnancy and maternity.* The Committee notes the observations made by the CGIL that with the repeal of Act No. 188 of 17 October 2007 by Act No. 112 of 25 June 2008, workers are no longer offered protection against resignations without cause (*licenziamento in bianco*), that is the practice of having the worker sign an undated letter of resignation at the time of hiring for future use by the employer at his or her convenience. According to the CGIL, such practice affects more specifically pregnant women who are de facto dismissed due to their pregnancy. The Committee also notes the UIL's observations that discrimination against women on the basis of pregnancy and maternity is still widespread. In its reply, the Government indicates that Act No. 188/2007, which provided for the compulsory use of a resignation form approved by the administration, proved

incomplete and difficult to implement. It also points out that a study group composed of labour inspectors and equality counsellors was set up by Directorial Decree No. 241 of 12 January 2009 to develop more appropriate procedures for the resignation of working mothers and that pursuant to the Ministerial Circular of 26 February 2009, a procedure for such resignations was finalized where labour inspectors are required to verify the reality of the intention to resign in order to validate the resignation, and to collect relevant data, to be included in an annual report for statistical purposes. The Government adds that in 2010, the labour inspectorate validated 19,017 resignations for maternity reasons (17,676 in 2009) and rejected 30 (29 in 2009). Infringements of the legal provisions protecting working mothers rose from 306 in 2009 to 1,280 in 2010 (an increase of 215 per cent). The Government also indicates that motives for resignation refer mostly to the impossibility to reconcile family responsibilities and working obligations due to the lack of available childcare or parental support. ***The Committee asks the Government to provide information on any further action taken to assess and address the issue of resignations without cause of pregnant women and working mothers. Considering the significant increase in infringements of the legislation on the protection of pregnancy and maternity at the workplace, the Committee asks the Government to examine whether there is a need for further action to prevent and eliminate such types of discrimination.***

*Equality of opportunity and treatment between men and women in access to employment and occupation. Family responsibilities.* Further to the above, the Committee recalls that measures assisting workers with family responsibilities are essential to promote gender equality in employment and occupation. The Committee notes from the Government's report the various measures taken to address work-life balance issues and strengthen childcare services, including the "National Strategic Framework for the Supplementary Regional Policy 2007-13", the "Programme of Action for the inclusion of women in the labour market - Italia 2020" and the "Third Plan of Action and Intervention to safeguard the rights and development of children", approved by the Presidential Decree of 21 January 2011. It also notes the Mutual Agreement on actions to support work-life balance policies, concluded on 7 March 2011 by the Ministry of Labour and Social Policies and the social partners, which contains a commitment of the social partners to address work-life conciliation issues in collective bargaining at regional and national level. The Committee, however, notes the observations of the UIL concerning the wide regional disparities in the development of childcare facilities and the high fees for child day care, forcing women to quit their jobs to take care of their child or children. The CGIL also questions the impact of the results achieved under some of the programmes. While acknowledging the marked differences between North and South in childcare coverage, the Government indicates that there has been some impact under the Third Plan and that results will be assessed in full in the next few years. ***Recalling that in 2009, the employment rate of women stood at 46.3 per cent overall and 30.7 per cent in the southern part of the country, and noting the measures to facilitate the reconciliation of work and family life, such as the plan "Italia 2020", the Committee requests the Government to monitor the impact of these measures on the number of women that are resigning from work or face obstacles in accessing employment due to difficulties in combining work and family responsibilities, and provide information on the results achieved. The Government is also requested to provide information on any measures taken or envisaged, and results achieved, with a view to addressing more specifically the sustainable integration of women in the labour market, including measures to promote a more equal balancing of family responsibilities between men and women workers as well as a greater awareness of the subject at enterprise level.***

*Non-discrimination and equality of opportunity and treatment irrespective of race, colour or national extraction.* The Committee previously noted a number of measures taken by the Government to address racial and ethnic discrimination, including against foreign workers, and had requested information on the specific impact of these measures, as well as any results achieved to promote a diverse workplace free from discrimination. The Committee notes that assistance and support service to victims of racial discrimination of the Office for the Promotion of Equality of Treatment and Elimination of Discrimination based on Race and Ethnic Origin (UNAR) has been fundamentally restructured through the launching of an online access point and that activities to provide advice, training and technical assistance to persons involved in combating discrimination, including local networks organized by regional administrations, have continued. The Government indicates that the number of cases of discrimination reported increased from 243 in 2009 to 540 in 2010, of which 11.3 per cent concerned workplace discrimination (16.6 per cent in 2009); the large majority of the complaints registered were lodged by foreigners (63.4 per cent). In this regard, the Committee notes that the UIL, while acknowledging the initiatives by UNAR, draws attention to the fact that immigrants very often continue to be victims of discrimination with respect to access to employment and in the workplace, which they rarely report. Those most affected are persons of African and Asian origin, ethnic minorities and especially women belonging to these categories returning to work. The UIL, while acknowledging that the situation in Italy is complex, considers that effective intervention increasingly requires regulatory and enforcement measures, institutions equipped with sufficient resources and greater awareness of the problem, especially in times of economic recession during which a tendency may exist to attach lower priority to policies aimed at combating discrimination and promoting greater awareness of workers' rights. With regard to other observations made by the CGIL and the UIL regarding the situation of migrant workers, the Committee will address these issues in the context of the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). ***The Committee asks the Government to provide specific information on the concrete impact of all measures taken to promote equality irrespective of race, colour and national extraction, and to promote a diverse workplace free from racial and ethnic discrimination, as well as to provide information, including statistics, concerning the activities of UNAR. The Committee hopes that the***

***Government will make every effort to ensure that the action taken and progress achieved to address racial and ethnic discrimination against certain minorities, including migrant workers, will not be adversely affected, and asks the Government to monitor carefully the impact of the austerity measures on the employment situation of these groups who are particularly vulnerable to the impact of the economic crisis, and to indicate the specific measures taken in this regard.***

*Roma, Sinti and Travellers.* The Committee notes the information provided by the Government that UNAR has pursued its activities aimed at eliminating stereotypes against the Roma, Sinti and Travellers' communities, at promoting their cultural heritage and at fostering mutual understanding, including through the further implementation of the Dosta Campaign. A project for the "Promotion of the governance of policies and tools for social inclusion and fight against discrimination of Roma, Sinti and Travellers' communities" is also envisaged under the European Social Fund, and particularly aims at supporting southern region authorities in this area. Furthermore, the Third Biennial Plan of Action and Interventions for the Protection of Rights and Development of Children aims at preventing educational segregation of minors, including Roma, Sinti and Travellers' children, through specialized courses and vocational training, sensitizing the teaching profession to intercultural and equality issues and strengthening the role of descendants as cultural mediators. The Committee notes in this regard that the CGIL and the UIL, while acknowledging the action taken by the Government to raise awareness of Roma culture and address stereotyping and prejudice against Roma, consider that stereotypes and xenophobic and racist prejudices vis-à-vis the Roma and Sinti populations still prevail, and that further action is needed. The UIL, referring to the "Final report of the survey of conditions of Roma, Sinti and Travellers in Italy" by the Special Commission for the protection and promotion of human rights of the Senate of the Republic (9 February 2011), also draws attention to the difficulties in implementing plans to support education and employment for these populations due to the lack of accurate data on their numbers. The Committee further notes that the High Commissioner for Human Rights of the Council of Europe once again reiterated its call for the adoption and implementation of a national strategy for the integration of Roma and Sinti, focusing much more on social inclusion, non-discrimination and combating "anti-gypsyism" and less on coercive measures, that would provide coherence with and support efforts at regional and local level (CommDH (2011) 26, paragraphs 40–43, 7 September 2011). Furthermore, the Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), expressed concern about the high dropout rates of Roma and Sinti girls from school and women and girls being subject to multiple forms of discrimination with respect to accessing education, health and employment (CEDAW/C/ITA/CO/6, 2 August 2011, paragraphs 24 and 52). ***The Committee requests the Government to intensify its action towards addressing discrimination and promoting social inclusion of Roma, Sinti and Travellers' communities, with a view to improving their access to employment and occupation, and their participation in education and training programmes, and to consider adopting an appropriate legal and policy framework addressing fully the obstacles to the integration of such minorities. The Committee also asks the Government to take the necessary steps to collect and analyse accurate data, disaggregated by sex, on the employment and education situation of the Roma, Sinti and Travellers' communities in the country, and report on the results achieved.***

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 observations of the Japanese Trade Union Confederation (JTUC-RENGO), dated 29 August 2011 which were annexed to the Government's report received on 17 October 2011.

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution).* The Committee notes the report adopted on 11 November 2011 of the tripartite committee established by the Governing Body set up to examine the representation submitted by the Zensekiyu Showa-Shell Labour Union (GB.312/INS/15/3). The tripartite committee noted that the representation raised two main issues: (i) whether section 4 of the Labour Standards Law No. 49 of 1947 and the Equal Employment Opportunities Law (EEOL) No. 45 of 1985 gave effect to the principle of equal remuneration for men and women for work of equal value; and (ii) whether the Labour Standards Law and the EEOL had been implemented in practice so as to give effect to this principle (paragraph 43). The tripartite committee concluded that further measures were needed, in cooperation with workers' and employers' organizations, to promote and ensure equal remuneration for men and women for work of equal value, in law and practice, in accordance with *Article 2 of the Convention*, and to strengthen the implementation and monitoring of the existing legislation and measures, including measures to determine the relative value of jobs (paragraph 57). The tripartite committee entrusted this Committee with following up the matters raised in the report (paragraph 58).

*Work of equal value. Legislation.* The Committee had previously noted that section 4 of the Labour Standards Law did not reflect fully the principle of the Convention. The Committee recalls that section 4 provides that "an employer shall not engage in discriminatory treatment of a woman, as compared to a man with respect to wages, by reason of the worker being a woman", and it asked the Government to take steps to amend the legislation to provide for the principle of equal remuneration for men and women for work of equal value. The Committee notes that the Governing Body tripartite committee concluded that the EEOL, while addressing aspects that might affect wage determination, did not directly deal

with equal remuneration between men and women for work of equal value. With respect to section 4 of the Labour Standards Law, the tripartite committee concluded that it did not on its face encompass the concept of “work of equal value” (paragraph 47), and that it did not appear that section 4 was being applied in practice to different job categories, types of jobs, and between employment management categories (paragraph 52). With respect to the interpretation by the courts of the Labour Standards Law, it was found that section 4 had been applied to different tasks and occupations in only a limited number of cases, namely two district court decisions (paragraph 50). The Committee also notes that the JTUC–RENGO calls for the inclusion of a clause prohibiting wage discrimination based on sex in the EEOL, and for “sex” to be added as a ground of discrimination in section 3 of the Labour Standards Law, which prohibits discrimination in wages, working hours and other working conditions by reason of nationality, faith or social status.

The Committee draws the Government’s attention to its General Survey on the Fundamental Conventions, 2012, noting that only prohibiting sex-based wage discrimination generally will not normally be sufficient to give effect to the Convention, because such a prohibition does not capture the concept of “work of equal value” (see General Survey, 2012, paragraph 676). In the General Survey, the Committee also called on countries that retain legal provisions that are narrower than the principle laid down in the Convention, in that they do not give expression to the concept of “work of equal value”, to amend their legislation, noting that more narrowly expressed provisions hinder progress in eradicating gender-based pay discrimination (see General Survey, 2012 paragraph 679). The Committee also recalls the high and persistent gender pay gap in Japan, which, based on the most recent information provided by the Government, is 29.4 per cent. The Committee considers that an important component in addressing such a significant gender pay gap will be the development of a clear legislative framework specifically providing for equal remuneration for men and women for work of equal value and for accessible procedures and remedies. ***The Committee urges the Government to take concrete measures to ensure that there is a legislative framework clearly establishing the right to equal remuneration for men and women for work of equal value and accessible procedures and remedies. The Committee asks the Government to provide detailed information on the measures taken and progress achieved in this regard.***

*Assessment of the gender pay gap.* The Committee notes the statistical information provided by the Government concerning the evolution between 2008 and 2010 of the disparity in hourly scheduled cash earnings between male and female workers, and concerning the same disparity by industry and by occupational group. The results of the Basic Survey on Wage Structure of 2011 show that, as of 2011, the average scheduled cash earnings (regular salary) of female “general workers” were 70.6 per cent of that of male workers (a pay gap of 29.4 per cent), and that considerable differences remain between industries and occupational groups (a pay gap of 45.5 per cent in the finance and insurance sector, and a pay gap of 36.3 per cent in the manufacturing sector). The Committee also notes that the Government does not provide statistical information concerning the public sector. ***The Committee asks the Government to continue to provide statistical information on the earnings of men and women and the evolution of the gender pay gap, and to include such information for both the public sector, including local government, and the private sector.***

*Practical measures.* The Committee recalls that Guidelines for reducing the gender pay gap: measures to be taken by workers and employers, were issued by the Ministry of Health, Labour and Welfare (MHLW) in August 2010 (the Guidelines). According to the Guidelines, while sex discrimination is not part of the design of the institutional framework, the employment management system in practice contributes to the gender difference in recruitment and assignment. The Guidelines propose the following measures: (i) review of the wage and employment management system; (ii) review of the operation of the wage and employment management system; and (iii) promotion of positive action. The Committee also notes the “Supporting tools for increasing visibility of the gender pay gap” attached to the Guidelines. The Committee also notes that under the Third basic plan for gender equality adopted in December 2010, securing equal opportunity and equal treatment between men and women in employment constitutes one of the priority areas. In particular, the Third basic plan set out, as one of its main objectives, the promotion of measures to secure equal opportunity and equal treatment in employment between men and women, including measures to resolve the gender pay gap in line with the Convention. Other objectives include facilitating employment for non-regular workers and promoting positive action. The Committee notes that the Government indicates that under the Third basic plan a target is set for increasing the number of enterprises that implement positive action to reach over 40 per cent by 2014, and for increasing the number of women in managerial positions (section chief or higher) in the private sector, which stood at 6.5 per cent in 2009, to approximately 10 per cent by 2015. The Government also refers to other measures being taken to support work–life balance, such as reviewing the current working patterns, including those of men, as well as encouraging men to take part in childcare and family chores. In this connection, the Committee notes the observation of JTUC–RENGO that awareness-raising activities by the Government concerning the Guidelines have not been sufficient. With regard to equal treatment between fixed-term workers and regular workers, the Committee recalls the MHLW’s Guidelines concerning the improvement of the employment management for fixed-term employees of 29 July 2008. The Committee notes from the MHLW Survey on fixed-term contracts that in 2009, female workers constituted 66.8 per cent of all fixed-term workers. The Committee also notes that the Report of the study group on fixed-term employment contracts published in September 2010 proposes measures to ensure stable employment and equal treatment for fixed-term workers, including considering a requirement for employers to establish systems allowing conversion of fixed-term status to regular status. ***The Committee asks the Government to provide information on the following:***

- (i) *specific measures taken to implement the proposals set out in the Guidelines for reducing the gender pay gap, including the promotion of positive action, and the results achieved;*
- (ii) *concrete steps taken to increase awareness and understanding of the Guidelines;*
- (iii) *progress made in achieving the targets under the Third basic plan on gender equality;*
- (iv) *action taken to follow-up on the recommendations of the report of the study group on fixed-term employment contracts, and the results achieved; and*
- (v) *any other measures taken to reduce the gender pay gap.*

*Part-time work.* The Committee notes from the Labour Force Survey in 2010 of the Ministry of Internal Affairs and Communication that the rate of part-time workers (those who work less than 35 hours per week) among all the workers was 26.6 per cent. The rate of male part-time workers was 14.6 per cent among male workers, while it was 43 per cent for female workers. Female workers constituted 68.3 per cent of all the part-time workers. The Committee recalls section 8 of the Part-time Workers Law, which prohibits discriminatory treatment concerning the determination of wages only in the case of part-time workers who meet specific criteria: their job descriptions and the level of responsibilities are equal to those of regular workers; they have concluded an employment contract for an indefinite period; and during the contract period, any change in their job description or assignment corresponds to what a regular worker could also expect. The Committee notes that JTUC–RENGO cites statistics indicating that the protection against discriminatory treatment under section 8 of the Part-time Workers Law was applicable to only 0.1 per cent of all part-time workers in 2010, and reiterates the need for an amendment of this Law to extend the protection against discrimination to all part-time workers. The Committee also notes that a report of the Working Group on Employment Equality of the MHLW Council of Labour Policy, dated 21 June 2012, proposes possible amendments to section 8 of the Part-time Workers Law. The Committee recalls the Basic Policy on Measures for Part-time Workers 2008–12 (Public Notice of the MHLW No. 280 of 14 April 2008), which makes reference to promoting conversions to full-time jobs (section 2(3)(3) of the Basic Policy). The Government indicates that 48.6 per cent of business enterprises which employ part-time workers were taking measures to promote conversion of part-time status to regular status according to section 12 of the Part-time Workers Law, and that 39.9 per cent of the enterprises had actually applied such measures from 2007–10. In this connection, JTUC–RENGO indicates that less than 25 per cent of all business enterprises are employing workers who actually converted their status to that of regular workers. The Government also indicates that “balanced treatment and conversion to regular workers promotion planners” have been assigned to equal employment offices, and that in the fiscal year 2010, the planners visited 10,840 workplaces and provided advice regarding this matter. In the same year, the equal employment offices provided administrative guidance concerning conversion of status to regular workers in 7,193 cases, among which corrections or improvements were made in 6,748 cases. ***The Committee asks the Government to continue to provide information on the implementation of the Part-time Workers Law, including statistical information on the proportion of male and female part-time workers. The Committee also asks the Government to indicate the impact of the Part-time Workers Law in narrowing the gender pay gap, and to indicate any progress made in revising section 8 of the Law to extend its coverage. It also asks the Government to provide information on the results achieved in promoting conversions from part-time status to regular status.***

With respect to temporary and part-time officials in local governments, the Committee recalls the high proportion of female temporary and part-time workers, particularly among medical and caretaking staff. The Committee notes the Government’s indication that extending the protection provided to private sector part-time workers to part-time workers in local governments would be difficult because the working conditions of the part-time workers in local governments are determined through a different structure of laws and ordinances, etc. The Government also indicates that in order to implement the notification of the Secretary General of the National Personnel Authority (NPA) (No. 1064 of 26 August 2008) concerning wages of part-time staff, regulated under section 22(2) of the Act on Wages of the General Service Staff, the NPA examined in 2009 the measures taken by respective ministries and agencies. The NPA found that all the ministries and agencies had established provisions on the wages of part-time employees and that the basic wages of part-time employees had reached the level provided in the notification in most of the ministries and agencies. The Committee also notes the Report of the Ministry of Internal Affairs and Communication of 23 January 2009 of the study group on short-time service of local public servants. This Report points out that while wages and reimbursement of expenses are provided for part-time officials, allowances or temporary grants should not be provided for part-time officials without any clear basis in the ordinances, etc. ***The Committee asks the Government to provide information on the number of temporary and part-time officials in the local authorities, disaggregated by sex, as well as on any follow-up measures to the 2009 Report of the study group on short-time service of local public servants including the results of the studies conducted. It also asks the Government to indicate the complaint mechanism for temporary and part-time officials in the local authorities, as well as the details of such complaints, concerning wages and reimbursement of expenses with a view to ensuring equal remuneration for men and women for work of equal value.***

*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 EEOL providing for measures to be identified that are considered to be indirect discrimination, and relevant court decisions. The Committee recalls that the review of the Enforcement Regulations under the EEOL was to take place in 2012, and notes the Government’s indication that a tripartite advisory council is reviewing the necessity for the revision of the EEOL. The Committee notes the observation



by JTUC–RENGO that the requirement of being a “head of a household” in order to qualify for social security benefits should fall under discrimination to be prohibited. In response, the Government indicates that companies adopt wage systems based on the idea that companies guarantee the livelihood of workers. *The Committee hopes that the Enforcement Regulations 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 it 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 Regulations, including any complaints received and relevant court decisions, including those addressing measures beyond the three determined to be indirect discrimination in the Enforcement Regulations. It further asks the Government to indicate whether any consideration is being given to prohibiting indirect discrimination with respect to social security benefits.*

*Career-tracking systems.* The Committee recalls once again the impact of the career-tracking system on the continuing wage disparity between women and men, due to the low representation of women in the main career track. According to the survey by the MHLW, in 2008, the rate of women among those newly recruited for the “main decisive jobs with the possibility of relocation” track was 16.9 per cent, while the rate of women among the recruited for the “routine work without the possibility of relocation” track was 92.8 per cent. The Committee also recalls the “Guidelines on ways for employers to take appropriate measures with regard to items stipulated in the provisions concerning the prohibition of discrimination against workers on the basis of sex, etc.” (Public Notice No. 614 of MHLW of 2006) (EEO Guidelines), which only prohibits discrimination based on sex within each employment category. In this regard, JTUC–RENGO continues to propose that the limitation on the prohibition of discrimination within each employment category under the EEO Guidelines should be abolished. In response, the Government states that under the lifelong employment practice in the country, human resource development and treatment is determined using categories set by job type and employment status rather than job duties at a specific time; the Government asserts that, therefore, it is reasonable to compare the treatment of workers within the same employment category. The Committee also notes the Government’s indication that it encourages enterprises to adopt positive action to increase the proportion of women in the main career track, and that the Equal Employment Offices provided advice to 104 enterprises in the fiscal year 2007 concerning employment management, including advice on conversion of workers to another career track. *Given the persistently low representation of women in the main career track, and the consequent impact on the wage disparity between men and women, the Committee urges the Government to step up its efforts to increase the number of women in the main career track, and to provide information in this regard. The Committee also asks the Government to provide information on the type of positive action taken to increase the proportion of women in the main career track, and the results achieved. The Committee reiterates its request for information on the general content of the administrative guidance provided to enterprises utilizing the career-tracking systems and on whether such guidance has resulted in an increase of women in the main career track. Please also provide any information on complaints or cases in this regard, and the outcome thereof, and updated and detailed statistical information on the distribution of men and women in different career tracks.*

*Objective job evaluation.* The Committee notes that the Governing Body tripartite committee concluded that the information provided by the Government had not indicated how the relative value of jobs was determined with a view to determining if jobs were of equal value (paragraph 54). The Committee also notes that the MHLW has developed a manual on implementing job analysis and job evaluation, which states that it contributes to the following: (i) identifying whether a job undertaken by part-time workers and regular workers is the same; (ii) clarifying whether the treatment is based on the job undertaken, and whether there is a balance in treatment between part-time workers and regular workers; and (iii) enhancing understanding of part-time workers by convincing them of the difference between the jobs of part-time workers and regular workers. The Committee notes that according to the manual, the comparison permitted is limited to the same jobs or “substantially the same” jobs. This is more restrictive than the principle of the Convention, and the only factor compared is “level of responsibility” which could disadvantage part-time workers. The Committee also notes that the report of the study group on future measures for part-time work was published in September 2011. This points out that despite the difficulty in adopting job analysis and job evaluation as an obligation of employers, including of small and medium-sized enterprises, discussions concerning equal treatment between part-time workers and regular workers could be promoted by introducing a job evaluation system and sharing the process and results of such a system among workers and employers. *The Committee asks the Government to provide detailed information on the practical application of the manual on implementing job analysis and job evaluation, including any follow-up studies or research conducted, with a view to expanding the comparison beyond the same or substantially the same jobs, and increasing the range of factors for the comparison. Please provide information on any other measures taken to promote objective job evaluation methods, and the progress made in applying the objective job evaluation methods in enterprises including any awareness-raising activities. The Committee also asks the Government to provide information on specific steps taken to ensure the use of objective job evaluation in the public sector.*

*Enforcement.* The tripartite committee noted the low number of cases covered by workplace inspections in which the Labour Standards Inspection Authority had provided guidance regarding violation of section 4 of the Labour Standards Law, and the lack of particulars as to the nature of the violations. The Committee notes that the Government reiterates that the Labour Standards Inspection Authority conducted 100,535 regular inspections, six of which were identified as cases of

violation of section 4 of the Labour Standards Law. It also notes the information provided concerning nine such cases in 2007, including the nature of the violations and the content of guidance provided. In all nine cases, correctional action was ordered by labour standards inspectors. The Committee further notes the information provided by the Government on the court decisions concerning section 4 of the Labour Standards Law. ***The Committee asks the Government to continue to provide detailed information on the nature of the violations, the content of the guidance provided and the correctional action ordered by labour standards inspectors in cases of violation of section 4 of the Labour Standards Law. It also asks the Government to provide information on the labour inspection, especially the concrete methodologies and the guidance provided to labour standards inspectors to enable them to identify instances of wage discrimination where men and women are engaged in jobs which are of a different nature, but which are nonetheless of equal value. The Committee also asks the Government to continue to provide information on court decisions with regard to section 4 of the Labour Standards Law.***

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1995)**

The Committee recalls the communication of the All Japan Construction, Traffic and Transportation Workers' Union Tokyo dated 13 October 2009, and notes the communication from the Japanese Trade Union Confederation (JTUC-RENGO) dated 29 August 2011, which was attached to the Government's report. It also notes the Government's reply to both of these communications.

*Article 3 of the Convention. Legislative developments.* The Committee notes with ***interest*** the legislative measures to give effect to the provisions of the Convention, in particular the amendments made by Law No. 65 of 1 July 2009 to the Childcare and Family Care Leave Law. The new provisions: (i) require employers to establish a short working hour system or other alternative measures for workers raising children up to the age of 3 (section 23), and to offer exemption from overtime work when requested by a worker raising children up to the age of 3, provided that it does not prevent the normal course of business (section 16-8); (ii) allow a worker to take up to ten days of leave per year to take care of a sick or injured child, if the worker has two or more children of pre-school age (sections 16-2 and 16-3); (iii) extend the period during which one-year childcare leave may be taken until the child turns 1 year and two months old, if both a father and a mother take childcare leave; (iv) establish family care leave (five days per year for one family member, and ten days per year for two or more family members) (sections 16-5 and 16-6); and (v) establish the dispute resolution assistance system by the "Work-Life Balance Conciliation Conference", if the Director of the prefectural Labour Bureau finds it necessary (sections 52-4 and 52-5). In addition, the legislation concerning childcare leave and family care leave for national public employees and local public employees was amended (last amended in December 2010) to provide as follows: (i) an employee whose spouse is taking childcare leave shall also be entitled to childcare leave, and an employee whose spouse can take care of their child shall also be entitled to early/late shift work and overtime work exemption; (ii) an employee who is taking care of a child under 3 years of age shall be entitled to an exemption from overtime work, unless it is extremely difficult to take measures to replace the worker; (iii) part-time employees shall be entitled to take childcare leave, if they meet certain requirements concerning working days; (iv) for national public employees, leave for taking care of a sick child is extended to ten days per year, if the employee has two or more children; and (v) part-time employees shall be entitled to take family care leave if they meet certain requirements concerning working days. ***The Committee asks the Government to provide information on the practical application of the revised Childcare and Family Care Leave Law, as well as the legislation concerning childcare and family care leave for national and local public employees. Please include relevant statistics disaggregated by sex on the number of workers with family responsibilities making use of the entitlements related to working time and leave.***

*Article 2. Application to all branches of economic activity and all categories of workers.* The Committee recalls that sections 5 and 11 of the Childcare and Family Care Leave Law enable fixed-term workers to take childcare leave and family care leave if they meet certain requirements. The Committee notes the guidelines concerning measures to be taken by employers to facilitate the conciliation of work and family life of workers who care for children or other family members (Guidelines No. 509 of 2009) issued by the Ministry of Health, Labour and Welfare, which, inter alia, provide guidance as to who could fulfil the requirements under sections 5 and 11 of the Childcare and Family Care Leave Law, as well as who could be considered to be a "substantially non-fixed-term" worker, and therefore entitled to childcare and family care leave regardless of the requirements under these sections. As to the probability of continuing to be employed after the child turns 1 year of age, which is required under section 5 of the Law, the Committee notes the Government's indication that an employee could show this probability when an indication is made in writing or orally upon the acceptance of the request for childcare or family care leave. In cases where there is no clear indication as to the probability of renewing the employment contracts, it will be determined based on actual situations, including the words and actions of employers about the prospect of continuous employment, the situation of other workers in a similar position, and the history of renewals of the worker's previous labour contracts. While noting the Guidelines No. 509 of 2009 and the Government's explanation regarding the probability of renewing employment contracts, the Committee still considers that fixed-term workers are in a vulnerable position in claiming entitlements pursuant to sections 5 and 11 of the Childcare and Family Care Leave Law. In this context, the Committee notes that the JTUC-RENGO reiterates its observation that requirements to be met by fixed-term workers for the benefits under the Childcare and Family Care Leave Law should be relaxed. It also recalls the JTUC-RENGO's previous observation that the childcare and family care leave system should

be extended to fixed-term workers in the public sector, and notes that the Government has not provided any updated information in relation to this matter. The Committee further notes that, while the Government has published a leaflet on “Promoting the taking of childcare leave by fixed-term employees”, according to research studies conducted in the fiscal year 2009–10 on the use of such leave by fixed-term workers, 40 per cent of them were not aware of the availability of the leave system. ***The Committee asks the Government to strengthen its efforts to ensure the application of the Convention to fixed-term and part-time workers, including in the public sector, as well as to increase awareness of the availability of childcare and family care leave for fixed-term workers. It also asks the Government to provide information on any obstacles encountered by fixed-term workers in order to show the probability of continuing to be employed, and the measures taken to remove such obstacles. Please provide up-to-date statistical information, disaggregated by sex, on the number of requests for childcare and family care leave by fixed-term workers, and the number of cases where these entitlements have actually been granted to them.***

***Article 4. Transfer to remote workplaces.*** The Committee recalls that section 26 of the Childcare and Family Care Leave Law requires taking into account family responsibilities when reassigning workers to such workplaces which would make it difficult for the worker to assume his or her family responsibilities. The Committee notes that the Guidelines No. 509 of 2009 provide that considerations under section 26 of the Childcare and Family Care Leave Law include: (i) identifying the worker’s situation of childcare or care for family members; (ii) taking into consideration the intentions of the worker concerned; and (iii) confirming the availability of any alternative means to care for a child or a family member in case the reassignment involves a change in his or her place of work (Part II, paragraph 14). The “Guidelines concerning Enlargement of Recruitment and Promotion of Female National Public Service Employees”, adopted in January 2011, also refers to the consideration to be given in making transfer orders for employees who are taking care of their children or family members. The Committee further notes the Government’s indication that in the fiscal year 2010, 13 applications for resolution of disputes filed with the Directors of the prefectural Labour Bureau, and one application filed at the Work–Life Balance Conciliation Conference, related to transfer. The Government indicates that, according to the Employment Status Survey in the fiscal year 2007, 1.2 per cent of workers who left work did so due to transfer, transfer of family members, or relocation of offices, but no further information has been provided concerning the impact of transfer practices. ***The Committee asks the Government to continue to provide information on the measures taken to monitor effectively and review transfer practices, including information on the measures taken to supervise the application of section 26 of the Childcare and Family Care Leave Law, and on any specific instances where guidance has been given by the competent authorities to resolve related difficulties. Please also provide statistics on the impact of transfer practices, disaggregated by sex, as well as the results of any survey undertaken in this regard both in the public and private sectors.***

***Reduction of working hours.*** The Committee previously noted the importance of the overall reduction of working hours in order to enable men and women with family responsibilities to enter and remain in the labour market, and recalls that paragraph 18 of the Workers with Family Responsibilities Recommendation, 1981 (No. 165), emphasizes the importance of the progressive reduction of daily hours of work and the reduction of overtime. The Committee also recalls the observations of the All Japan Construction, Traffic and Transportation Workers’ Union Tokyo, drawing attention to the excessive working hours of bus drivers which impact on family responsibilities. With regard to the measures taken to promote the reduction of working hours, the Committee notes that the Guidelines concerning improvement of setting working hours (No. 108 of 2008) refer to reconciliation of work and family life. It also notes the Government’s indication that the amendment made to the Labour Standards Law, which became effective on 1 April 2010, and which raised the overtime wage rate, aims at reducing long working hours and realizing a society in which work and family responsibilities are balanced. The legislation concerning working hours of the national and local public employees was also amended effective on 1 April 2010, to raise the overtime wage rate. With regard to the private sector, the Government indicates that the average annual working hours have remained below 1,800 hours since the year 2008 and show a decreasing trend, although the average annual working hours for workers other than part-time workers have remained around 2,000 hours and have not yet been reduced. With regard to the working hours of bus drivers, the Committee notes the Government’s indication that in addition to the “Standards for Improvement of Working hours, etc. for Drivers of Automobiles” which set the limit of working hours, the Labour Standards Inspection Offices have been securing full compliance with working conditions of drivers of automobiles as a major issue, and have been actively identifying problematic bus companies. Judicial action, including possible prosecution of the employers, has been taken in serious or malicious cases of long working hours. ***The Committee asks the Government to step up its effort to reduce annual working hours, and to provide information on the practical application of the Labour Standards Law and the legislation concerning public employees, with a view to reducing effectively the annual working hours and overtime work of both female and male workers with family responsibilities, including those who engage in the transportation sector. It also asks the Government to provide detailed information on the impact of the Law on Special Measures for the Improvement of Working-Time Arrangements, and the Guidelines No. 108 of 2008 on reconciling work and family responsibilities. Please continue to provide information on the trends in the average number of hours worked by men and women, disaggregated by contractual status, and full-time and part-time workers.***

***Article 8. Termination of employment.*** The Committee recalls the conclusions of the Conference Committee on the Application of Standards that the Government should examine whether the current legislation provides an appropriate basis for the prevention of and protection against discrimination on the ground of family responsibilities. The Committee

notes that the protection against dismissal or other disadvantageous treatment has been expanded to cover leave for caring for a sick or injured child, family care leave, and persons benefitting from a restriction on overtime work or night work, and from a short working time (sections 16-4, 16-7, 16-9, 18-2, 20-2 and 23-2) and that the Guidelines No. 509 of 2009 further clarify the manner in which these sections of the Childcare and Family Care Leave Law should be interpreted (Part II, paragraph 11). The Committee also notes the observation of the JTUC-RENGO citing the statistics of the Ministry of Health, Labour and Welfare that the number of consultations received by the Ministry concerning dismissals and other disadvantageous treatment for reasons of taking childcare leave was 1,657 in the fiscal year 2009 and 1,543 in the fiscal year 2010. ***The Committee asks the Government to provide information on the practical application of the relevant sections of the Childcare and Family Care Leave Law prohibiting dismissal or otherwise disadvantaged treatment, including information on administrative consultations and judicial decisions relating to these provisions, and their outcome. It also asks the Government to indicate any other measures taken to ensure that the guarantees of Article 8 of the Convention are fully applied in law and practice.***

## Kazakhstan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)**

*Article 1(b) of the Convention. Legislative framework. Work of equal value.* The Committee recalls that the Labour Code of 2007 contains provisions that are narrower than the principle of the Convention. The Committee recalls that section 7(1) prohibits sex discrimination in the exercise of labour rights and section 22(15) provides that the employee shall have the right to “equal payment for equal labour without any discrimination”. The Committee notes that the Government replies that there is no discrimination on any grounds, including sex, in the determination of the amount of a worker’s wage, and it considers that the legislation is in compliance with the Convention. The Committee recalls that prohibiting sex discrimination in labour rights, including wages, is not sufficient to give effect to the Convention, as it does not capture the concept of “work of equal value” (General Survey on fundamental Conventions, 2012, paragraph 676). The Committee notes further that “equal payments for equal labour without discrimination”, is also insufficient, as it also does not capture the concept of work of equal value. The Committee recalls that the concept of “work of equal value” lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. Due to stereotypical attitudes regarding women’s aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women and others by men, and often “female” jobs are undervalued in comparison with work of equal value performed by men (General Survey, 2012, paragraph 673). ***The Committee urges the Government to take concrete steps to amend the Labour Code to give full legislative effect to the principle of equal remuneration for men and women for work of equal value, allowing for comparisons not only of similar jobs, but of jobs which are of an entirely different nature. Please provide 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: 1999)**

*Article 1 of the Convention. Prohibition of discrimination.* The Committee recalls that section 7(2) of the Labour Code of 2007 covers all prohibited grounds listed in *Article 1(1)(a)* of the Convention, except the ground of colour. It also recalls that section 7(2) includes a number of additional grounds, as envisaged in *Article 1(1)(b)* of the Convention (such as age, physical disability, tribe and membership in a public association). ***The Committee asks the Government to provide information on the implementation of section 7(2) of the Labour Code, including information on any activities undertaken to make the legislation known and information on the number, nature and outcome of discrimination cases dealt with by the courts or the labour inspectorate. The Committee again recommends that the prohibited ground of colour is added to section 7(2) of the Labour Code.***

*Article 2. Exclusion of women from certain occupations.* The Committee recalls that the list of jobs for which it is prohibited to engage women and the maximum weights for women to lift and move manually pursuant to section 186(1) and (2) of the Labour Code shall be determined by the state labour authority in agreement with the health authorities. The Committee recalls that protective measures applicable to women’s employment which are based on stereotypes regarding women’s professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation. Provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (General Survey on fundamental Conventions, 2012, paragraph 840). ***The Committee asks the Government to provide a copy of the list referred to in section 186 of the Labour Code for examination by the Committee, and to indicate how it is ensured that any measures limiting women’s employment are strictly limited to maternity protection.***

*Equality of men and women in employment and occupation.* The Committee recalls that the Law of 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women provide for gender equality in labour relations and in education and training, among others. It also recalls that the objectives of the Strategy for Gender Equality 2006–16 include: (i) achieving equal representation of men and women in the executive and legislative bodies and in decision-

making positions; and (ii) developing women's entrepreneurship, and increasing women's competitiveness in the labour market. ***The Committee again asks the Government to provide full information on the practical application of the Law of 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women, as well as on all the measures taken to implement the Strategy for Gender Equality 2006–16, and on the results achieved, including statistical information disaggregated by sex.***

The Committee also recalls that sections 194 and 195 of the Labour Code grant paid leave to adoptive parents and unpaid childcare leave to parents until the child reaches the age of 3, which are available for women and men on an equal footing. However, the Committee also recalls that section 187 of the Labour Code requires written consent of women with children under the age of 7 years and other persons bringing up children under the age of 7 years without a mother in cases of night work, overtime work, business trips or rotation work. 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 recalls that when legislation reflects the assumption that the main responsibility for family care lies with women or excludes men from certain rights and benefits, it reinforces and prolongs stereotypes regarding the roles of women and men in the family and in society. The Committee considers that, in order to achieve the objective of the Convention, measures to assist workers with family responsibilities should be available to men and women on an equal footing (General Survey, 2012, paragraph 786). ***The Committee asks the Government to amend sections 187–189 of the Labour Code, so as to grant the entitlements on an equal footing for women and men. The Committee also asks the Government to provide information on the extent to which the entitlements under sections 194 and 195 of the Labour Code are being used by men and women.***

***Practical application.*** The Committee notes that the Government has adopted the Employment Programme 2020, which seeks to foster employment opportunities and to provide subsidized trainings to self-employed, unemployed and poorer people, as well as to facilitate entrepreneurship in rural areas. It also notes the Government's indication that in order to tackle the financial crisis, it has adopted a package of measures to stimulate the economy, including the regional employment and managerial training strategy. As a result of financing US\$2.3 billion to this strategy in 2009 and 2010, 258,600 jobs in 2009 and 132,000 jobs in 2010 were created. In addition, 200,000 persons from targeted groups were placed in temporary, state-subsidized jobs and 150,000 persons received training for new jobs. The Government also indicates that the unemployment rate fell from 6.6 per cent in 2008 to 5.4 per cent in 2011. The Committee further notes that the United Nations Committee on the Elimination of Racial Discrimination (CERD), in its concluding observation of 6 April 2010, noted that, while ethnic groups represented about 36.4 per cent of the population in 2010, more than 84 per cent of public servants as a whole and more than 92 per cent in central government bodies were ethnic Kazakhs; the CERD recommended that the Government takes effective measures with a view to improving the representation of minority groups in state bodies and public services and preventing and combating all forms of discrimination in the selection and recruitment process in the central and local administration (CERD/C/KAZ/CO/4-5, 6 April 2010, paragraph 12). With regard to enforcement, the Committee notes the Government's indication that it has set up a monitoring and social protection committee in the Ministry of Labour and Social Protection and local monitoring and social protection departments in all regions. ***The Committee asks the Government to provide the following:***

- (i) ***detailed information on the specific measures taken to promote and ensure equality of opportunity and treatment for 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) ***the impact of the measures taken to tackle the financial crisis, including statistical information on the participation of men and women, disaggregated by sex, 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 in the context of the Employment Programme 2020, 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, as well as the measures taken to increase the representation of ethnic or religious minorities in the civil service;***
- (v) ***information on the measures taken to plan and implement activities to raise awareness of the principle of equality, in cooperation with workers' and employers' organizations, as envisaged under Article 3(a) and (b) of the Convention; and***
- (vi) ***information on the training provided for law enforcement officials concerning the principle of the Convention.***

## Republic of Korea

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1998)***

The Committee notes the Government's report in reply to the request made by the Conference Committee on the Application of Standards in June 2011. The Committee notes the observations of the Federation of Korean Trade Unions (FKTU) and the observations of the Korea Employers' Federation (KEF), attached to the Government's report, the communication from the Korean Confederation of Trade Unions (KCTU), dated 31 August 2012, and the communication of the International Organisation of Employers (IOE) and the KEF, dated 31 August 2012, as well as the Government's replies thereto. The Committee also notes the observations made by Education International (EI) and the Korean Teachers and Education Workers' Union (KTU), dated 31 August 2012, and the Government's reply thereto of 23 October 2012.

*Articles 1 and 2 of the Convention. Migrant workers.* The Committee recalls that the Conference Committee concluded in 2009 that the issue of protecting migrant workers from discrimination and abuse required the Government's continued attention and requested the Government to pursue, and where necessary, to intensify efforts in this regard. It had also called on the Government to review the functioning of the current arrangements for workplace changes, in consultation with workers' and employers' organizations, with a view to determining how best to achieve the objective of reducing migrant workers' vulnerability with regard to abuse and violations of their labour rights.

The Committee notes from the Government's report that changes were made recently to the Act on employment, etc. of foreign workers and the Employment Permit System (EPS). With respect to the possibility for a migrant worker to change workplace, section 25(1) of the Act was amended in 2012, so as to allow such a change in "cases publicly announced by the Minister of Employment and Labour, where it is deemed difficult to work in the workplace considering social norms, due to a reason not attributable to the worker, such as temporary shutdown, business closure, cancellation of the employment permit, restrictions on employment and violations of working conditions or unfair treatment by the employer" (new section 25(1)(2)). The Committee recalls that under the EPS, a worker is permitted to change workplaces a maximum of three times, unless the change is due to "a reason not attributable to the foreign worker". Pursuant to the amendment to section 25, a change of workplace due to "unfair treatment by the employer" is now considered as a change for "a reason not attributable to the worker" and therefore is not included as one of the three permitted changes under the EPS. In addition, the Ministry of Employment and Labour issued a Notification (No. 2012-52) according to which "unfair treatment" covers "unreasonable discrimination by the employer, etc. on the grounds of his/her nationality, religion, gender, physical disability, and so on".

The Committee notes that, according to the IOE, which reflects the position of the KEF, the right of the foreign worker to stay in Korea arises from the labour contract signed between the worker and his or her employer and in principle he or she should continue to work in the workplace where permission for employment was first obtained. The IOE considers, therefore, that the limitation on the number of workplace changes is not a violation of foreign workers' rights. According to the IOE, foreign workers should receive pre-employment training in the sending country and should be made aware of the Korean labour legislation and the system of grievances. The Committee notes from the observations of the KCTU that despite the amendment to section 25(1), it is very difficult for migrant workers to apply for a change of workplace in practice when they face unfair treatment, discrimination or even serious violations of their human and labour rights for a number of reasons: the burden of proof on the worker; language difficulties and the absence of legal support; the lack of appropriate criteria when the request for change is examined by the job centre; and the obligation for the worker to continue to work at the same workplace during the period of the investigation (up to one month). The Government indicates that a foreign worker can file a complaint with a labour inspector or the police and request a change of workplace on the basis of the results of the investigation. In addition, when it is "objectively recognized" that a foreign worker suffers discrimination, he or she may request immediately a change of workplace and therefore does not have to continue to work in the workplace while awaiting the results of the investigation. The Government also states that the Ministry of Employment and Labour provides interpreters and has set up 60 job centres, 34 support centres for foreign workers and one call centre to provide counselling and support with regard to grievances and labour law issues.

The Committee notes the Government's indication that 94.7 per cent of foreign workers who applied for a change of workplace succeeded in transferring to another workplace within the three-month permitted period in 2011 (compared to 96.7 per cent in 2010), that the main reason for a change of workplace was termination of or refusal to renew the labour contract (85.6 per cent), and that violation of the employment contract was invoked only in 0.13 per cent of the cases during the period 2010–11. The Committee notes that the KCTU considers that these statistics are not reliable, because workers must obtain permission from their employer to request a change of workplace, and they are forced, or sometimes advised by the Ministry, to change the reason invoked in the middle of the procedure for fear of rejection of their case. The Committee notes the Government's explanation that a confirmation from the employer is only required when the reason invoked is termination of employment. The Committee notes from the KCTU's observations that in August 2012 a new government policy entitled "Measures for Improvement in Foreign Workers' Change of Workplace and Prevention of Broker Intervention" ended the practice of providing migrant workers with a list of companies offering jobs, and introduced a system operated by job centres, whereby employers are provided with a list of migrant workers seeking employment, thereby limiting their ability to choose their employer.

With respect to the possibility of being re-employed, the Committee recalls that migrant workers who have entered Korea under the EPS can be employed up to four years and ten months and then should go back to their country. The Committee notes the Government's indication that since July 2012, foreign workers in small businesses (50 workers or less) in the agricultural, livestock and fisheries industries and manufacturing businesses, who have worked "faithfully in the same workplace for four years and ten months without transferring to another workplace" are entitled to re-enter and be re-employed in Korea after a period of three months outside of the country. The Government also indicates that foreign workers who have transferred to another workplace during their employment period may re-enter and work again in Korea after a period of six months outside of the country "through the special Korean language test system". The Committee notes that the KCTU points out that, given that most migrant workers want to work in Korea longer, in practice, this system prevents them from requesting a change of workplace and escaping poor working conditions in order to be able to return to Korea.

The Committee notes from the Government's report the high number of violations found in the 2,241 workplaces employing foreign workers that were inspected in 2011 (7,994 violations, of which 1,768 concerned wages and other working conditions, including gender discrimination). It further notes that fines were imposed in only 74 cases and only six cases resulted in prosecutions. With respect to complaints lodged by migrant workers, the Committee notes that, according to the information provided by the Government, most of the complaints relating to discrimination brought before the National Human Rights Commission (NHRC) were rejected or dismissed.

*While noting the changes in the legislation regarding the EPS, the Committee asks the Government to take the necessary steps to ensure that in practice the EPS, including the "re-entry and re-employment system", allows for appropriate flexibility for migrant workers to change their workplaces so as to avoid situations in which they become vulnerable to abuse and discrimination on the grounds set out in the Convention, and to report on the measures taken. The Committee also asks the Government to ensure that measures are taken to provide migrant workers with adequate access to procedures and remedies in case of discrimination and to ensure that appropriate sanctions are applied. In this respect, the Committee requests the Government to provide clarification on the following points:*

- (i) *the definition of the expression "unreasonable discrimination" used in Notification No. 2012-52 as well as the grounds of discrimination covered; and*
- (ii) *how, and by which authority, is it "objectively recognized" that a foreign worker suffers discrimination and therefore does not have to wait for the outcome of the investigation on his or her request for a change of workplace to leave to employer.*

*The Committee also asks the Government to take measures to raise awareness among workers and employers of the new provisions in the Act on employment, etc. of foreign workers, in particular the new rules concerning changes of workplace, as well as of the anti-discrimination legal provisions in force and the relevant procedures available, including with respect to sexual harassment. Please continue to provide information on the inspection of workplaces employing migrant workers (number of enterprises inspected and workers covered, number and nature of violations detected, and remedies provided), as well as the number, content and outcome of complaints brought by migrant workers before labour inspectors, the police, the courts and the NHRC.*

*Discrimination on the basis of sex and employment status.* The Committee recalls that the Conference Committee requested information concerning the difficulties encountered with the enforcement of the Act on the protection, etc. of fixed-term and part-time employees, which prohibits discriminatory treatment of these workers based on their employment status. The Conference Committee also requested information on whether trade unions were authorized to bring complaints on behalf of victims of such discrimination, and called on the Government, in consultation with the workers' and employers' organizations, to improve the legislative protection against discrimination based on employment status, which disproportionately affected women. The Committee notes that, according to the Government, as of March 2012, there were 5,809,000 non-regular workers (contingent, part-time and atypical workers), representing 33.3 per cent of all wage earners (47.8 per cent according to the KCTU which alleges that a large number of persons in "special types of employment" are excluded from the Government's statistics) of which 53.7 per cent are women. The Committee further notes from the statistics provided by the Government that the hourly gross wage of female non-regular workers (i.e. the majority of female workers) represents only 42 per cent of the hourly gross wage of male regular workers. According to the KCTU, which continues to express concern regarding the discrepancies between regular and non-regular workers, there is no indication of any improvement of the situation of non-regular workers. The KCTU is also of the view that fixed term contract workers are excessively used, and that the recruitment of such workers should only be permitted in certain cases. The Committee also notes the observations made by the FKTU according to which, despite legislative protection, in practice women on fixed-term contracts often face disadvantages and even dismissal, due to pregnancy, childbirth, and childcare. The FKTU points to the high concentration of women workers in precarious employment and reports an increase in cases of sexual harassment as well as cases of verbal abuse and disrespect against "indirectly employed" workers. According to the IOE, after the introduction of the Act on the Protection, etc. of Fixed-term and Part-time Employees in 2007, a significant improvement of the situation with regard to discrimination was reported by many companies. In addition, the IOE states that there have been many criticisms regarding the scope of the protection against discrimination. The IOE considers that prohibiting discrimination related to wages and working conditions is appropriate,

but not other aspects such as welfare and other advantages and, in the case of subcontracting, it is not reasonable to apply the same conditions of work to workers hired by different companies.

The Government indicates that a set of measures was adopted in 2011 with a view to “removing irrational discrimination against non-regular workers and reinforcing the social safety net for vulnerable workers”. The Committee notes the Government’s statement that it took measures aimed at converting non-regular employment into regular employment by expanding vocational training, converting public sector non-regular workers into workers with open-ended contracts, and obliging the employer to directly and immediately employ dispatched workers in case of illegal dispatch.

The Committee notes that as pointed out by the KCTU, the number of cases of discrimination brought before the Labour Relations Commission significantly decreased in 2011 (46 compared to 194 in 2010) and half of them were dismissed, rejected or withdrawn. In this respect, the Committee notes the Government’s indication that the new measures also include an increase of the time limit for filing a complaint to seek redress from discrimination from three to six months as well as new advisory and supervision powers granted to labour inspectors to address discrimination against fixed-term, part-time and dispatched workers. The Committee notes the Government’s statement that trade unions cannot be given the right to file complaints on behalf of workers because they are neither a party whose rights are infringed as a result of discriminatory treatment nor a party who gains benefit from redressing discrimination. The Government however points out that according to section 36 of the Labour Relations Commission Regulations, a trade union may act on behalf of others with the approval of the chairperson of the Commission. The Committee notes that, according to the KCTU, under this procedure, the burden of filing a complaint remaining on the worker still requires the worker to first file a complaint and then an assignment is made to the trade union. The Committee recalls the importance of allowing trade unions to bring complaints as it reduces the risk of reprisals and is also likely to serve as a deterrent to discriminatory action, particularly in the context of non-regular employment.

***The Committee asks the Government to take the necessary measures, including through the qualitative and quantitative strengthening of enforcement, to protect fixed-term, part-time and dispatched workers against discrimination, particularly women, and to provide information on the impact on precarious employment of the set of measures taken in 2011, including measures with a view to converting non-regular employment into regular employment and measures for the protection of subcontracted workers. Please indicate specifically the results of such measures on the employment of women as regular workers. Considering the particular vulnerability of non-regular workers to discrimination, the Committee asks once again the Government to consider taking steps to allow trade union representation with respect to complaints on behalf of fixed-term, part-time and dispatched workers under the existing anti-discrimination legislation, and to provide detailed information on whether and to what extent the procedure under section 36 of the Labour Relations Commission Regulations has been successfully used for trade union representation. It also asks the Government to provide information on the effect of the measures taken to increase time limits for filing a discrimination complaint on the number of complaints brought before the Labour Relations Commission and the results thereof. The Committee asks the Government to provide specific information on the advisory and supervisory activities of labour inspectors concerning discrimination against non-regular workers, including the number of workplaces inspected and male and female workers covered, the number and nature of the violations identified and the remedies provided and sanctions imposed.***

*Equality of opportunity and treatment of women and men.* In its previous comments, the Committee noted that the Conference Committee had called on the Government to step up its efforts and to seek cooperation with the employers’ and workers’ organizations, to increase the low level of women’s participation in the labour market and reduce the gender pay gap. The Committee notes the detailed statistical information provided by the Government on the situation of men and women in workplaces subject to the affirmative action scheme (i.e. private enterprises with 500 employees or more and public institutions with 50 employees or more), which shows a very slow increase in the percentage of women workers and women managers employed in both the private and the public sectors from 2009 and 2011 (respectively 34.87 per cent in 2011 compared to 34 per cent in 2009 and 16.09 per cent in 2011 compared to 14.13 per cent in 2009). The participation of women in the labour force has been stable, around 54 per cent, in the past years. The Committee notes that, according to the Government, the low rate of women’s participation in the labour market is mainly attributable to their unsuccessful return to work after a career break. In August 2012, measures were taken with a view to reconciling work and family life, such as reduced working hours for childcare and a family care leave system, through the amendment of the Act on Equal Employment and Support for Work-Family Reconciliation. The Committee notes that the IOE expressed concern at the potential negative effect of measures to promote the employment of women, such as the family care leave, on the recruitment of women workers. In this respect, the Committee notes the Government’s indication that support would be provided to small enterprises to assist them with the replacement of workers.

The Committee notes the Government’s indication that honorary equal employment inspectors appointed by and in enterprises ensure that these enterprises voluntarily address gender discrimination and sexual harassment issues. Local and employment offices provide the honorary equal employment inspectors with training, have set up local consultative bodies to this end and have created a pool of instructors to provide training on measures to prevent sexual harassment in workplaces. In 2012, the Government developed administrative guidelines on the cooperation between local employment and labour offices and equal employment counselling centres regarding remedies to be provided to women who are



victims of gender discrimination. The Committee also notes the FKTU's indication that unions and women's organizations have conducted counselling services on discrimination, sexual harassment at work and reconciliation of work and family responsibilities. The organization also states that expertise in gender discrimination and gender sensitivity of labour inspectors has significantly decreased and this has made it difficult to collaborate on these issues. As far as collaboration is concerned, the Government further indicates that it holds regularly a women employment policy forum, in which workers' and employers' organizations and experts on women's policy participate, and that an expert advisory council in which workers' and employers' organizations and experts also participate, examines the functioning of the affirmative action scheme in order to improve it. The Committee notes from the observations of the FKTU that a significant number of workplaces have not implemented the affirmative action scheme, due to the low level of awareness among employers, and that the scheme should be provided with adequate budget and expertise. ***The Committee asks the Government to continue to take steps, in consultation with workers' and employers' organizations, to promote the access of women to employment both in the public and the private sector, in particular to a wide range of jobs and to take measures to address the underlying causes of gender discrimination, such as gender stereotypes on the role and the aspirations of women in employment and in society. The Committee asks the Government to continue to provide information on the results achieved in terms of employment of women through the implementation of the affirmative action scheme and the improvements thereof. It also asks the Government to provide information on the concrete activities conducted by honorary equal employment inspectors in enterprises and equal employment counselling centres in the field on gender equality and non-discrimination. The Committee also asks the Government to provide information on the application in practice of the reduction of working hours for childcare and the family leave care, indicating the proportion of men and women who have used this possibility, as well as information on any assessment made or envisaged of its impact on equality of opportunities between men and women in employment and occupation. Please provide a copy of the Act on Equal Employment and Support for Work-Family Reconciliation, as amended.***

***Discrimination based on political opinion.*** The Committee notes that EI and the KTU allege discrimination based on political opinion against pre-school, primary and secondary teachers. The KTU states that in May 2010, the Government announced that it would dismiss 183 teachers because they had made donations to the Democratic Labour Party (DLP) and therefore had joined the DLP illicitly, in violation of their obligation of political neutrality under the Korean Civil Servants Law. The KTU indicates that as of August 2012, eight teachers were dismissed, 21 were suspended and many were fined, and legal proceedings are still ongoing. The organization points out that only those teachers in primary and secondary schools are banned from joining a political party, participating in any political activities, and donating money to a political party under Korean Law. The Committee also notes that the KTU indicates that in June 2009, 17,147 teachers signed a statement requesting the withdrawal of education policies designed to create fierce competition among students at the expense of quality education for all. The KTU issued in July 2009 a second statement entitled "Teachers' statement for the freedom of expression and protection of democracy" which was endorsed by 28,637 teachers. The Government filed a complaint against 89 KTU activists and initiated disciplinary procedures against them, and dismissed 15 KTU chapter heads and suspended 45 union staff members. The KTU indicates that the dismissed teachers have been reinstated by the courts' decisions but that they took the case to the Supreme Court. In a ruling dated 19 April 2012, the Supreme Court decided that the teachers' petition campaign was illegal since public servants should maintain political neutrality and that the political expression of teachers was against the public good and in violation of the Public Servant Act.

In its reply, the Government indicates that teachers, who are state public officials, are prohibited from engaging in political activities by law (State Public Officials Act) and that as an exception, university teachers are allowed to engage in political activities as party members. The Committee notes the explanations from the Government that this is due to a difference between the duties of elementary, middle and high school teachers and the duties of university teachers, the former being responsible for educating students as prescribed by law and the latter combining academic research and activities of teaching. The Government indicates that the Constitutional Court took a similar position. It further states that the Constitution and the law impose a duty of political impartiality on teachers, as state public officials, ban their involvement in political activities, and prohibit them from taking collective action for matters that are not their official duties. The Committee also notes the Government's indication that, in the Court's ruling on the case relating to the KTU's statements, the issuance of statements and the gathering of signatures on such statements was an act of clearly manifesting a political bias or partisan views therefore incurring the direct risk of infringing political impartiality of teachers who are public officials.

The Committee recalls that the protection against discrimination on the basis of political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions and also covers discrimination based on political affiliation. The protection of political opinion applies to opinions which are either expressed or demonstrated, but does not apply where violent methods are used (General Survey on fundamental Conventions, 2012, paragraph 805). The Committee also recalls that the protection of freedom of expression is aimed not merely at the individual's intellectual satisfaction at being able to speak his or her mind, but rather – and especially as regards the expression of political opinions – at giving him or her an opportunity to influence decisions in the political, economic and social life of the society. For political views to have an impact, the individual generally acts in conjunction with others (General Survey on Equality in Employment and Occupation of 1988, paragraph 57). The Committee also considers that political opinion may in certain circumstances constitute a bona fide qualification for certain senior posts

which are directly concerned with developing government policy; however this is not the case when conditions of a political nature are laid down for public employment in general, or for certain other professions. In order to come within the scope of the exception provided for in *Article 1(2)* of the Convention, the criteria used must correspond in a concrete and objective way to the inherent requirements of a particular job (General Survey on fundamental Conventions, 2012, paragraph 831). *The Committee requests the Government to take measures to ensure that elementary, primary and secondary school teachers enjoy protection against discrimination based on political opinion and requests the Government to provide information on the measures taken in this respect.*

## Mexico

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1961)***

The Committee notes the observations of 30 August 2011 of the National Union of Workers (UNT) and those of 16 September 2011 from the Revolutionary Confederation of Workers and Agricultural Labourers (CROC) and the “Vanguardia Obrera” Federation of Workers (FTVO).

With regard to the UNT’s comments, the Committee notes that they refer to the difficult working conditions faced by women in domestic work which is characterized by excessively long working hours, the absence of contracts, the lack of social security coverage, pay lower than the statutory minimum, and moral and sexual harassment. The UNT stresses the need for these women to be covered by the Federal Labour Act and the Social Security Act. The Committee notes that the Government has not sent comments on these matters. The Committee notes that, based on the UNT’s comments, it appears that most of the workers affected are women, and recalls that all workers, without discrimination based on sex, must enjoy equality of opportunity and treatment in employment and occupation. The Committee also draws the Government’s attention to the recently adopted Domestic Workers Convention, 2011 (No. 189). *The Committee requests the Government to provide information on the measures adopted or envisaged to ensure adequate protection against discrimination of women domestic workers.*

With regard to the observations of the CROC and the FTVO, the Committee notes that they refer to the application of the Convention in general and report a lack of any clear policy to combat discrimination, the absence of any training programmes for women about their fundamental rights and the lack of appropriate sanctions for acts of discrimination. *The Committee requests the Government to send its comments on these observations, and it will examine these issues and the other pending issues together with the next report due from the Government.*

## Mongolia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1969)***

*Article 1 of the Convention. Legislative developments.* The Committee recalls the adoption on 2 February 2011 of the Law on the Promotion of Gender Equality. The Committee notes with *interest* a range of provisions relevant to the Convention. The Law defines and prohibits direct and indirect gender discrimination (section 4.1), including in employment and labour relations (section 11.1), in being employed in civil service (section 10.1), and in education and professional training (section 12.1). The Law also provides for equal access of men and women on equal terms to land and other immovable and movable properties, budget allocations, financial assets, credit, other economic wealth and resources (section 9.2). An employer is obliged to prevent gender discrimination in employment policies and labour relations and to ensure gender equality at the workplace, including through implementing activities based on a plan, refraining from listing preferences of one sex in job vacancies, and providing professional training opportunities for employees returning from absence due to childbirth and childcare (section 11.3). The Committee also notes that the Law establishes the National Committee on Gender (section 18), which has a broad mandate, including to coordinate and organize activities on the formulation, implementation and monitoring of gender policies, programmes and special measures; to review and to issue recommendations on the implementation of legislation, policies, programmes and recommendations made by the international organizations concerning the promotion of gender equality; and to coordinate the establishment of a gender database and an integrated information network. In addition, the Government is obliged to ensure the availability and accessibility of sex disaggregated statistical data (section 5.1.5). Complaints of violations of the Law can be brought before the National Human Rights Commission by persons who consider that they have been discriminated against, as well as trade unions and non-governmental organizations (sections 23.1 and 23.2), and if the ground of complaint is established as related to labour contracts or collective agreements, the case shall be resolved under the labour dispute resolution process (section 24.2). *The Committee asks the Government to provide information on the practical application of the Law on the Promotion of Gender Equality, including the activities carried out by the National Committee on Gender and the number and nature of complaints examined and the outcome thereof, as well as details regarding any proceedings brought before the National Human Rights Commission and the labour dispute resolution process. The Committee also asks the Government to indicate any practical impact of section 11.3 of the Law on preventing discriminatory job advertisements.*

*Exclusion of women from certain occupations.* The Committee recalls its previous comments concerning the exclusion of women from a wide range of occupations under section 101.1 of the Labour Law of 1999 and Order No. A/204 of 1999. The Committee notes the Government's indication that section 8(b) of the list under the Order of 1999, which prohibits women from driving a vehicle weighing more than 2.5 tons, is being restated because the State Professional Inspection Agency affirmed that a modern heavy load truck is not harmful for women's health. The Committee once again recalls that protective measures applicable to women's employment which are based on stereotypes regarding women's professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation (General Survey on fundamental Conventions, 2012, paragraph 840). ***The Committee urges the Government to ensure that protective measures are strictly limited to protecting maternity and that those measures aimed at protecting women because of their sex or gender based on stereotyped assumptions, in accordance with section 101.1 of the Labour law and Order No. A/204 of 1999 are repealed. Please provide information on the steps taken in this regard, including the status of section 8(b) of the list under the Order No. A/204 of 1999.***

*Inherent requirements.* The Committee notes that section 6.5.6 of the Law on the Promotion of Gender Equality allows recruitment of a person of particular sex in accordance with section 101 of the Labour Law, or "based on a specific nature of some workplaces such as in preschool education institutions". It also notes that sections 6.5.1 and 6.5.2 of the Law allows provisions of separate educational services or workplace facilities for men and women, whose scope seems to be too broad as constituting exceptions to gender discrimination. ***Recalling that the concept of inherent requirements of a particular job must be interpreted restrictively so as to avoid undue limitation of the protection provided by the Convention, the Committee asks the Government to take steps to review and revise section 6.5.6 of the Law on the Promotion of Gender Equality. It also asks the Government to indicate how it is ensured that provisions of separate educational services or workplace facilities for men and women under sections 6.5.1 and 6.5.2 of the Law do not in practice deprive men and women of equality of opportunity and treatment in respect of their employment.***

*Workers with family responsibilities.* The Committee recalls section 100 of the Labour Law, which limits protection against dismissal on grounds of care for a child under 3 years of age only to mothers and single fathers. The Committee notes that the Law on the Promotion of Gender Equality prohibits preferential treatment in employment or dismissal based on sex, pregnancy, child caretaking roles or family status (section 11.1), and that incorporation in collective agreements of provisions on the creation of conditions and opportunities for men and women to combine their work and family responsibilities is required (section 11.2). ***The Committee asks the Government to provide information on whether any steps have been taken or envisaged to amend section 100 of the Labour Law, with a view to aligning it with the provisions of the Law on the Promotion of Gender Equality. It also asks the Government to provide information on the practical application of sections 11.1 and 11.2 of the Law on the Promotion of Gender Equality, including the number and nature of discrimination cases handled by the courts or the National Human Rights Commission, on grounds of family responsibilities. Please further provide any examples of collective agreements incorporating provisions aimed at the creation of conditions and opportunities for men and women to combine their work and family responsibilities.***

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

## Nicaragua

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)**

*Article 2 of the Convention. Application of the principle of equal remuneration for work of equal value.* In its previous comments the Committee took note of observations of the Trade Union Unification Confederation (CUS) according to which the Ministry of Labour does not monitor compliance with the principle of equal remuneration for work of equal value and, further, in the health sector women doctors are paid less than their male colleagues. The Committee notes that in its reply, the Government states that the Ministry of Labour fulfils its obligation to oversee women's rights in accordance with the provision of the law that "men and women shall receive equal remuneration for equal work when their conditions of work are the same". The Government refers to Wage Regulation Decree No. 19-2007, which regulates the remuneration of public servants of both sexes, on the basis of job complexity, and Act No. 648 on Equal Rights and Opportunities, which lays down the principle of equal pay for equal work in keeping with work experience, academic qualification, level of responsibility and responsibility of the position. The Committee nonetheless points out that in its previous comments it noted that the Regulation to the Act on Equal Rights and Opportunities (Decree No. 29-2010 of 28 June 2010), which applies to the public and the private sectors, refers to the principle of equal pay for work of equal value (section 2) and to equal pay for work of equal value and equality of conditions (section 18). In those comments the Committee asked the Government to provide information on the manner in which the principle was applied in practice. The Committee points out in this connection that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. The principle of the Convention goes beyond equal remuneration for equal work or work done in the same conditions since it also encompasses jobs that are of an entirely different nature, but that are nevertheless of equal value (see General Survey on the fundamental Conventions, 2012, paragraph 673). ***The Committee asks the Government to take the necessary steps to ensure that the principle of the Convention is applied fully in practice, and to provide information on the***

*implementation and practical effects of the Regulation to the Act on Equal Rights and Opportunities, particularly sections 2 and 18. The Committee will examine this matter and the other issues raised in its previous direct request together with the Government's regular report due in 2014.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)**

*Discrimination on political grounds.* The Committee took note in its previous comments of an observation of the Trade Union Unification Confederation (CUS) reporting that 21,000 public sector workers had been dismissed because they were not members or did not share the ideology of the present Government and that 128 trade unions had ceased to exist. The Committee notes in this connection that according to the Government, the organization has not backed up its assertions with information such as the number of persons dismissed, the state institutions from which they were dismissed or the names of the trade unions disbanded. The Committee observes that these allegations are serious and warrant the Government's full attention. ***In view of the seriousness of the allegations, the Committee requests the Government to take the necessary measures to initiate an investigation to examine these allegations, and to take steps to overcome any discrimination. It also asks the Government to report any developments in this regard. The Committee also asks the CUS to provide the Government with further details about the reported dismissals, including the names of the workers dismissed and the state institutions concerned, to enable the Government to conduct its investigation promptly.***

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)**

*Articles 1, 2 and 3 of the Convention. Discrimination based on sex with regard to employment in the police force.* The Committee previously noted 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 Committee had noted that the criteria and provisions relating to pregnancy and marital status contained in sections 118, 124 and 127 constitute direct discrimination, and sections 121, 122 and 123 are likely to go beyond what is permitted under *Article 1(2)* of the Convention. The Committee also noted that legal provisions establishing common height for admission to the police are likely to constitute indirect discrimination against women. The Committee recalls that women should have the right to pursue freely any job or profession and the Committee points out that exclusions or preferences in respect of a particular job in the context of *Article 1(2)* of the Convention, should be determined objectively without reliance on stereotypes and negative prejudices about men's and women's roles (General Survey on fundamental Conventions, 2012, paragraph 788). ***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. 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.***

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

## **Panama**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)**

*Article 1 of the Convention. Work of equal value.* In its previous comments the Committee referred to the need to amend section 10 of the Labour Code, which is limited to the payment of equal wages "for equal work in the service of the same employer, performed in the same job, working day, conditions of efficiency and seniority", so as to give legislative expression to the principle established by the Convention of equal remuneration for men and women for work of equal value. The Committee takes note of the Government's statement that it is considering the possibility of setting up a tripartite Higher Labour Council to regulate social dialogue and of creating an institutional forum for the promotion of consensus. The Government states that it may consider amending the Labour Code along those lines. ***The Committee asks the Government to continue providing information on the creation of a Higher Labour Council and on any decision the Council might take on amending the Labour Code so as to give legislative expression to the principle of equal remuneration for men and women for work of equal value, as well as on any other progress in this area. The Committee also asks the Government to take steps to promote a better understanding of the principle embodied in the Convention among the authorities and among employers, workers and their organizations.***

*Equal remuneration.* In its previous observation the Committee took note of the observations of the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) on the violation of the principle of

equal remuneration for work of equal value in the public sector and the fact that no wage rates had been fixed without discrimination based on sex. The Committee notes the Government's indication that all public servants earning the minimum wage, without distinction, have been granted a wage increase and that steps are under way to introduce a system for assessing effort and performance. It also states that the National Vocational and Development Training Institute (INAMU), established under Act No. 71 of 23 December 2009, is working on a public equal opportunities policy that will contain guidelines for incorporating women in development and equalizing the remuneration of men and women. The Committee notes the Government's statement regarding the steps taken by the National Vocational and Human Development Training Institute (INADEH) to train women in non-traditional activities. The Government attaches detailed statistics on the remuneration of men and women in the public and private sectors. The Committee observes, however, that it is not possible to assess the evolution of the gender pay gap from the statistics provided by the Government. The Committee notes that there is still extensive occupational segregation (55,167 men and 15,484 women in the manufacturing sector, 100,180 men and 3,802 women in construction, 23,865 men and 52,404 women in teaching) and that most women are employed in lower paid jobs and in a lower wage range. As to the wage gap, 0.5 per cent of men and 1 per cent of women in the teaching sector earn less than 100 balboas, while 2.9 per cent of men and 0.7 per cent of women earn 3,000 balboas or more. ***The Committee asks the Government to continue taking concrete steps with regard to education and vocational training so as to broaden women's employment opportunities, reduce the marked occupational segregation in the labour market and reduce the gender pay gap. The Committee specifically asks the Government to provide information on the measures adopted by INAMU and INADEH on the subject. The Committee also asks the Government to provide information on any developments in this area, as well as up-to-date statistics disaggregated by sex showing the evolution of the gender pay gap in the public and private sectors.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)***

***Discrimination based on political opinion. Administrative careers.*** In its previous comments the Committee noted the observations of the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) concerning the risk of the dismissal of public servants on the ground of their political opinions. The Committee also asked the Government to provide information on the interpretation and application in practice of the requirement of "loyalty" which has to be demonstrated by public employees covered by administrative careers to enjoy stability, as envisaged in section 136 of Act No. 9 of 1994 (as amended by Acts Nos 24 of July 2007 and 14 of 2008) and in section 5 of Executive Decree No. 44 of 11 April 2008. In this respect, the Committee notes the Government's indication that no public servant has been dismissed on the ground of their political opinions. The Committee observes however that the Government has not provided the specific information that it requested in its previous observation. ***The Committee requests the Government to provide information on the manner in which it is ensured that public servants are not subject to discrimination on the ground of their political opinions, especially in election periods, the manner in which the requirement of "loyalty" of public servants envisaged in sections 136 of Act No. 9 of 1994 and 5 of Executive Decree No. 44 is interpreted, and on whether there have been any court decisions on this subject. The Committee also asks 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 set out in section 67 of Act No. 9 of 1994.***

***Discrimination based on sex.*** In its previous comments, the Committee requested the Government to provide information on the measures taken or envisaged in the context of its equality policy to ensure that pregnant women or women on maternity leave who work on temporary contracts are not subject to discrimination. The Committee notes the Government's repeated indication that the protection against dismissal of pregnant women and those on maternity leave covers women with contracts without limit of time, but that it has not provided information on the protection afforded in the case of temporary contracts. The Committee recalls that the Convention applies to all women workers, irrespective of the type of contract and their status as being pregnant or mothers, and it draws the Government's attention to paragraph 784 of its General Survey on fundamental Conventions, 2012. ***The Committee requests the Government to take the necessary measures to ensure that women are not subject to discrimination based on pregnancy or maternity, particularly with regard to their access to and security of employment. The Committee also requests the Government to provide information on the measures adopted or envisaged in the context of its equality policy to ensure that women with temporary contracts do not find themselves in situations in which they are more vulnerable to discrimination based on pregnancy or maternity.***

***Access to education of women from groups vulnerable to discrimination.*** The Committee notes the concluding observations of the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), which refer to the large number of girls who drop out of school due to early pregnancies, despite Act No. 29 of 2002, which provides for the continuation of education in such cases, and the high level of illiteracy found among women from rural areas and indigenous women (CEDAW/C/PAN/CO/7 of 5 February 2010, paragraphs 34–37). The Committee emphasizes the importance of providing vocational guidance and taking active measures to promote access to education and training, free from considerations based on stereotypes or prejudices, with a view to broadening the range of occupations from which men and women are able to choose (General Survey, 2012, paragraph 750). ***The Committee requests the Government to take the necessary measures to guarantee the access to education of women from groups vulnerable to***

*discrimination, and particularly women in rural areas, indigenous women and pregnant girls. The Committee requests the Government to provide information in this regard.*

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

## Peru

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1970)***

The Committee notes the observations received on 3 October 2011 of the Confederation of Workers of Peru (CTP), the Single Confederation of Workers of Peru (CUT), the National Federation of Municipal Workers of Peru (FENAOMP), the Regional Federation of Health Workers – Lima Callao and Lima Provinces Region (FERSALUD), the Federation of Education Sector Administrative Workers of Peru (FETRASEP), the National Federation of Hotel and Allied Workers of Peru (FNTHRSP), the Union of Ministry of Agriculture Employees (SITAMA), the Single Union of Employees of the National Institute for Children (SUTINSN), the Single Union of the Ministry of Health Central Administration (SUTAC MINSA), the Single Union of Administrative Employees of Education Institutions (SUTAIE UGEL 05), the Single Union of *Telefónica del Perú* Workers (SUTTP), the National Union of Public Employees of the Airforce of Peru (SINEPFAP), the Union of *Pueblo Libre* Municipal Workers (SINDOBREMUN) and the Single Union of Rímac Municipal Workers (SUTRAOM Rímac). The Committee notes that these organizations state that according to a report by the labour inspectorate most of the complaints that were filed by women in 2009 and gave rise to workplace visits by the labour inspectorate are obstructed by employers. They further indicate that the labour inspectorate does not publish in sufficient detail the results of measures to combat discrimination since the information is not disaggregated by sex, and does not indicate whether the inspection visits were scheduled or conducted further to complaints. The observations also refer to complaints filed with the Ombudsman's office in connection with disciplinary investigations and the exclusion of pregnant women from the federal police and armed forces training institutes, and limitations on access to employment on the basis of age. The organizations further object that there is no body responsible for monitoring compliance with labour standards in the public sector, asserting that the labour inspectorate has jurisdiction only in the private sector, that there are no policies on the prevention of sexual harassment and that it is unclear where authority lies for hearing sexual harassment complaints. *The Committee requests the Government to provide its observations on these comments. It asks it to indicate in particular:*

- (i) what measures are taken against employers who obstruct labour inspectors in their work;*
- (ii) which authority has competence for addressing complaints of discrimination filed by public sector employees;*
- (iii) what specific measures have been adopted for the prevention of sexual harassment in the workplace; and*
- (iv) which authority has competence to address complaints of sexual harassment.*

In its previous observation the Committee also referred to the need to provide information on the practical application and the effects of the Act to promote the competitiveness, formalization and development of micro and small enterprises and access to decent work (Legislative Decree No. 1086); the Act to approve standards for the promotion of the agricultural sector (Act No. 27360); the Act to establish the new administrative services contract (Legislative Decree No. 1057) and the Domestic Workers Act (No. 27986). The Committee also asked the Government: (i) to provide information on the implementation and results of the system to follow up and monitor the National Equal Opportunities Plan, on gender-based indicators and on reports produced by the Ministry of the Interior's Observatory for Equal Opportunities between Woman and Men; (ii) to report on the implementation of the national and regional equal opportunities plans and their practical effects on the public sector and the private sector; (iii) to reply to the comments of the Lima Chamber of Commerce (CCL); and (iv) to continue to take the necessary steps to increase women's participation in employment in the public sector and the private sector. *The Committee requests the Government to provide information in its regular report on the issues raised in the observation and direct request of 2010.*

## Russian Federation

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1961)***

*Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 99th Session, June 2010).* The Committee recalls 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 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, and 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. It also 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. It specified that such measures should include strengthening the legal framework, including ensuring that the legal framework addresses direct and indirect discrimination, the burden of proof, provides for effective remedies, and that there are mechanisms to promote, analyse and monitor equality of opportunity and treatment.

*Articles 1 and 3 of the Convention. Legislative framework. Noting that the Government provides no information on strengthening the legislative framework, the Committee asks the Government to provide specific information on any measures taken or envisaged to ensure protection against both direct and indirect discrimination, effective remedies, to address the burden of proof, and to strengthen or establish mechanisms for promotion, analysis and monitoring of equality of opportunity and treatment in employment and occupation for all groups covered under the Convention, including ethnic minorities. Recalling the Government's previous indication that a draft federal law on state guarantees of equal rights and freedoms and equal opportunities for men and women had been adopted by the State Duma in a first reading, the Committee asks the Government to provide updated information on the status of the process of adoption of the law.*

*Articles 2 and 5. Gender equality and special measures of protection.* The Committee welcomes the Government's indication that, as a result of the consultations among the Ministry of Health and Social Development and the social partners, it was decided that Resolution No. 162 would be amended. It also notes that the Government repeats that employers may assign to women work that is included in the list, provided the employer creates safe working conditions, which are certified as safe by the competent state authorities. The Government also indicates that 456 occupations and 38 branches of industry constitute only 2 per cent of all types of economic activities; therefore, according to the Government, the list cannot be considered discriminatory. The Government adds that work is under way to introduce a system of occupational risk management, with the cooperation of the social partners, at each workplace. The Committee again reminds the Government that protective measures applicable to women's employment, which are based on stereotypes regarding women's professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation. Provisions regarding the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (General Survey on fundamental Conventions, 2012, paragraph 840). It also recalls that the Conference Committee asked the Government to ensure that the planned review of the system of health and safety protection addressed the needs of both men and women, and would not lead to measures hindering women's participation in the labour market. ***The Committee asks the Government to ensure that Resolution No. 162 of 2000 is amended without further delay, as well as section 253 of the Labour Code, and that any measures limiting women's employment are strictly limited to maternity protection. Please provide specific information on the progress made in this regard, including with respect to the consultations with workers' and employers' organizations and the results of such consultations.***

*Articles 2 and 3. Equality of opportunity and treatment of men and women.* The Committee notes the Government's indication that in March 2010, the rate of economically active women (between 15 and 72 years of age) was 56.7 per cent, compared to 66.4 per cent for men. The Committee notes from the statistical information provided by the Government under the Equal Remuneration Convention, 1951 (No. 100), that women constituted 81.2 per cent in education, 79.7 per cent in health care and social services, and 77.6 per cent in hotel and restaurant services in 2009, and observes that the labour market remains highly gender segregated. ***The Committee asks the Government to take measures to promote equal opportunities of men and women in employment and occupation, including information on the specific steps taken to ensure that men and women have equal access to employment in the broadest possible range of sectors and industries, as well as at all levels of responsibility. Please continue to provide updated detailed statistical information on the distribution of men and women in the different sectors and industries, as well as levels of responsibility.***

*Sexual harassment.* The Committee recalls the absence of specific legal provisions on sexual harassment in the workplace. It notes the Government's indication that sexual harassment is covered by section 133 of the Criminal Code, which provides that it is a criminal offence to force a person to perform acts of a sexual nature, including sexual intercourse, sodomy, lesbianism, or other acts of a sexual nature using blackmail, threats of destroying, damaging or taking away property, or by exploiting the victim's financial or any other form of dependence. The Committee recalls that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, and the fact that criminal law does not cover the full range of behaviour that constitutes sexual harassment in employment and occupation. Given the gravity and serious repercussions of sexual harassment, as a serious manifestation of sex discrimination and a violation of human rights, it is important to take effective measures to prevent and prohibit sexual harassment at work, both quid pro quo and hostile environment sexual harassment (General Survey, 2012, paragraphs 789 and 792). ***The Committee asks the Government to take steps to include in legislation a clear definition and prohibition of both quid pro quo and hostile work environment sexual harassment in employment and occupation. It also asks the Government to indicate any measures taken in practice to prevent and address sexual harassment, and to raise awareness of employers, workers and their representatives regarding sexual harassment.***

*Equality of opportunity and treatment of ethnic minorities and indigenous peoples.* The Committee recalls the Government's acknowledgement that there is a need for measures promoting non-discrimination in employment and occupation based on ethnic or national origin and to promote tolerance between the various ethnic groups in the country, including ethnic associations created under the Federal Law on National and Cultural Autonomy, 1996. The Committee recalls that where labour market inequalities along ethnic lines exist, a national policy to promote equality of opportunity and treatment, as envisaged in *Articles 2 and 3* of the Convention, should include measures to promote equality of opportunity and treatment of members of all ethnic groups with respect to access to vocational training and guidance, placement services, employment and particular occupations, and terms and conditions of employment (General Survey, 2012, paragraph 765). ***The Committee asks the Government to take specific measures to strengthen the enforcement of the Labour Code's provision on non-discrimination, with particular emphasis on discrimination on racial or ethnic grounds, including through promotional measures as well as effective enforcement of the legislation. It reiterates its request to the Government to provide information with regard to equal opportunities and treatment in employment and occupation of indigenous peoples.***

*Parts III and IV of the report form. Monitoring and enforcement.* The Committee recalls that since the 2006 amendments to the Labour Code, persons considering themselves to be discriminated against in the sphere of labour can no longer petition the labour inspectorate. The Committee notes the Government's indication that the labour inspectorate provides advice to workers and explains in detail the procedure for lodging claims based on discrimination before the courts. It also notes the Government's indication that in 2009 efforts were made to identify and eliminate violations of labour rights of women pursuant to a plan of the Federal Labour and Employment Service, and that 3,818 inspections were carried out, during which 13,578 violations of the Labour Code were identified and resolved. According to the Government, over 2,100 instructions were issued, over 1,600 fines were imposed, and over 500 dismissals were revoked, following requests by the labour inspectorate. ***The Committee asks the Government to provide information on the number of cases concerning discrimination in employment and occupation brought before the courts under the Labour Code, and on the outcome of such cases, as well as the impact of limiting the avenues of seeking redress only to the courts. It also asks the Government to provide information on the results of labour inspections, as well as on how the advice provided by the labour inspectorate assists workers and employers in lodging claims based on discrimination before the courts. The Committee further asks the Government to provide information on any measures taken to strengthen the capacity of labour inspectors to provide such advice. As requested by the Conference Committee, please provide specific information on steps taken to strengthen or establish mechanisms for the promotion, analysis and monitoring of equality of opportunity and treatment in employment and occupation for all groups covered under the Convention, including ethnic minorities.***

## Rwanda

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1980)**

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislation.* In its previous comments the Committee emphasized that the definition of the expression "work of equal value" which appears in section 1.9 of Law regulating Labour No. 13/2009 of 27 May 2009 refers only to "similar work" and is therefore too narrow. It also noted that this Law does not contain any substantial provisions prescribing equality of remuneration for men and women for work of equal value. The Committee notes that the Government refers again in its report to article 37 of the Constitution, which states that "every person having equal competence and capacity shall have the right, without any discrimination, to equal wage for equal work". It further notes the Government's indication that, in practice, there is no discrimination between men and women with regard to remuneration, and also its commitment that, on a legislative level, full effect will be given to the principle of equal remuneration for men and women for work of equal value when Law No. 13/2009 is revised. The Committee recalls that because of stereotypical attitudes regarding women's aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women and others by men and "female jobs" are often undervalued in comparison with those of equal value performed by men when determining wage rates. The concept of "work of equal value" is essential for addressing such occupational segregation because it permits a broad scope of comparison which not only covers "equal", the "same" or "similar" work but also jobs of an entirely different nature which are nevertheless of equal value (see General Survey on fundamental Conventions, 2012, paragraphs 672–679). ***The Committee asks the Government to take the necessary steps to amend Law No. 13/2009 of 27 May 2009 establishing the labour regulations, so as to give full effect to 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.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)**

*Article 1 of the Convention. Legislation.* In its previous comment the Committee asked the Government to provide further information concerning the scope of section 12 (prohibiting discrimination) of Law No. 13/2009 of 27 May 2009 regulating labour in Rwanda in view of discrepancies between the different linguistic versions of this Law. The Committee notes the Government's explanation that the prohibition of all direct or indirect discrimination covers all



stages of employment, including recruitment, and an act need not be intentional to constitute discrimination within the meaning of this section. It further notes that no legal proceedings have been instituted on the basis of any of the prohibited grounds of discrimination, nor has any penalty been imposed under section 169 of Law No. 13/2009. **The Committee requests the Government to take the necessary steps to align the different linguistic versions of section 12, so that they explicitly prohibit any direct or indirect discrimination in employment and occupation in accordance with Article 1(3) of the Convention, namely as regards access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. It also requests the Government to provide information on the application of section 12 of the Law by the courts, stating the grounds of discrimination invoked, the penalties imposed and remedies provided.**

**Sexual harassment.** In its previous comments the Committee welcomed the adoption of Law No. 59/2008 of 10 September 2008 concerning the prevention and suppression of gender-based violence, and the inclusion in Law No. 13/2009 of provisions prohibiting “gender-based violence” in employment, and direct or indirect moral harassment at work. While noting that the combination of these legislative provisions covered the two essential elements of sexual harassment at work as set out in its 2002 general observation, the Committee asked the Government to consider taking the necessary steps to adopt a clear and precise definition of sexual harassment in the workplace, ensuring that this definition covered both quid pro quo and hostile working environment sexual harassment. The Committee notes the Government’s indication that a provision specifically concerning sexual harassment and covering quid pro quo and hostile environment sexual harassment will be included in Law No. 13/2009 establishing the labour regulations, when it is revised. **The Committee requests the Government to provide information on progress made in the process of the revision of Law No. 13/2009 and on any other provisions adopted on sexual harassment in employment and occupation. The Committee repeats its request for information concerning any measure taken to prevent and eliminate sexual harassment in the workplace (educational programmes, awareness-raising campaigns relating to appeal mechanisms, etc.).**

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

## Sao Tome and Principe

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1982)**

The Committee notes with *regret* that for the fifth consecutive year 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:

**Legislation.** The Committee notes from the Government’s report that a draft General Labour Act has been prepared and submitted to the National Assembly. However, due to a change of Government, it was unlikely that the legislation would be adopted very soon. The Committee recalls its previous comments in which it noted that the provisions of the Constitution do not fully reflect the Convention’s principle as they refer to equal wages for “equal work” rather than “work of equal value”. Hence, the need to take further legislative action to ensure full compliance with the Convention. The Committee recalls its 2006 general observation, stressing the importance of giving full legislative expression to the principle of the Convention, providing not only for equal remuneration for equal, the same or similar work, but also prohibiting pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value (paragraph 6). **The Committee, therefore, urges the Government to ensure that the future General Labour Act explicitly provides for the right of men and women to receive equal remuneration for work of equal value, in accordance with the Convention, and to indicate any progress made in this regard. The Committee also reminds the Government that ILO technical assistance is available and asks the Government to consider forwarding a copy of the draft legislation to the Office for its review.**

**Cooperation with workers’ and employers’ organizations.** The Committee recalls the important role of workers’ and employers’ organizations with respect to giving effect to the provisions of the Convention. **It, therefore, asks the Government to seek the cooperation of these organizations with regard to the establishment of an appropriate legislative framework to apply the Convention, as indicated above, as well as with regard to practical measures to ensure equal remuneration for men and women for work of equal value. Please keep the Committee informed of progress made in this regard.**

**Statistical information.** The Committee notes the Government’s indication that the National Institute of Statistics was currently carrying out a survey which also covered the issue of remuneration of men and women. **The Committee asks the Government to communicate the results of the ongoing survey as soon as they become available.**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1982)**

The Committee notes with *regret* that for the fifth consecutive year 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:

**Legislation.** The Committee notes from the Government’s report on the application of the Equal Remuneration Convention, 1951 (No. 100), that a draft General Labour Act has been prepared. **The Committee requests the Government to ensure that the legislation will include a prohibition of direct and indirect discrimination at all stages of the employment process and on all the grounds listed in Article 1 of the Convention. It requests the Government to indicate the measures taken to this end.**

**Policies and institutions.** *Equality of opportunity and treatment of men and women in employment and occupation.* The Committee notes that the Government has adopted a National Strategy for Gender Equality and Equity, which also deals with

issues relating to women's equality in the world of work. Further, the Government indicates that participation of women in education and vocational training are a priority of the Government. With a view to strengthening the promotion of women, a new Institute for Women is being established under the Ministry of Labour. *The Committee requests the Government to provide the following:*

- (a) *a copy of the National Strategy for Gender Equality and Equity;*
- (b) *information on the establishment and activities of the Institute for Women, on the specific measures taken to promote women's equal access to vocational training and employment in the private and public sectors, and the results obtained by such action; and*
- (c) *statistical information on the participation of men and women in vocational training and the labour market, indicating their levels of participation in the different sectors and occupations.*

*Awareness raising.* The Committee recalls the importance of educational programmes to raise awareness of the principle of equality of opportunity and treatment in employment and occupation. *The Committee requests the Government to provide information on any action taken or envisaged to promote understanding and awareness of the principle of equality among workers and employers as well as society at large, including through cooperation with workers' and employers' organizations.*

## Saudi Arabia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1978)**

The Committee notes the Government's report in reply to the request made by the Conference Committee on the Application of Standards in June 2012.

*National equality policy.* The Committee recalls its previous observations, calling on the Government to take measures to declare and pursue a national equality policy as required under *Article 2 of the Convention*, addressing at least all the grounds set out in *Article (1)(1)(a)* of the Convention. Terms of reference had been provided by an ILO high-level mission on the development of a national equality policy, including regarding the establishment and mandate of a multi-stakeholder task force. The Committee notes the Government's general indication that it considers that the different laws and regulations, including the Labour Code, ministerial decisions and regulations, and decisions of the Consultative Council reinforce that the official policy is based on combating all forms of discrimination, segregation or exclusion on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin. It states further that the official policies, educational systems and programmes, administrative instructions and practices are in conformity with the Government's approach to the elimination of any discrimination or segregation. The Government also states that there is no declared or hidden discriminatory policy against non-Saudis, as evidenced by the approximately 10 million non-Saudis living in stability and security in the country. In response to the previous requests and concerns of the Committee with respect to discrimination based on religion, the Committee also notes the Government's general indication that no cases have been brought before the courts alleging such discrimination. The Committee draws the Government's attention to its 2012 General Survey on fundamental Conventions, highlighting that it is essential to acknowledge that no society is free from discrimination, and that continuous action is required to address it. The Convention requires the national equality policy to be effective: it should therefore be clearly stated, which implies not only that all discriminatory laws and administrative practices are repealed or modified, but also that programmes are set up, stereotyped behaviours and prejudicial attitudes are addressed and a climate of tolerance promoted, and monitoring is put in place. Noting the very general indications of the Government, the Committee recalls that measures to address discrimination in law and in practice should be concrete and specific (see General Survey, 2012, paragraphs 844–845). Recalling that the Government had previously indicated that steps were being taken to examine the establishment of a working group responsible for the preparation of a national equality policy, the Committee notes that the Government provides no information in this regard. *The Committee urges the Government to take steps to establish the multi-stakeholder task force, with a view to taking concrete measures, without further delay, to develop and implement a national policy designed to promote equality of opportunity and treatment in employment and occupation, with a view to the elimination of any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin, and asks the Government to provide specific information in this regard, including with respect to measures taken to encourage and promote a climate of tolerance among all the sections of the population. The Committee again asks the Government to provide information on the steps taken to secure ILO technical assistance in this regard to which the Government previously referred. The Committee also asks the Government to undertake the national survey on the situation in the country with regard to discrimination on all the grounds set out in the Convention, and the establishment of an action plan, which was foreseen in the terms of reference for the multi-stakeholder task force.*

*Legislation.* The Committee recalls that the Labour Code, 2006, contains no specific provisions defining and prohibiting discrimination in employment and occupation. The Committee notes the Government's indication that the regulations in force are based on the prohibition of discrimination between citizens or between citizens and foreign workers. The Committee notes, however, that the Government does not refer to any specific legislation in this regard. *The Committee urges the Government to take concrete steps to include as part of its national equality policy, legislation specifically prohibiting discrimination, both direct and indirect, in the public and private sectors, on at least all the grounds set out in the Convention, covering all workers and all aspects of employment, and ensuring effective means of redress. Please provide specific information on the concrete steps taken in this regard.*

*Domestic workers and agricultural workers.* With respect to the Committee's previous requests for information on how various groups of workers were protected against discrimination in practice, the Committee notes the Government's indication that the Ministry of Labour considers the formulation of special labour regulations on agricultural and rural workers to be a priority. Regarding domestic workers, the Government indicates that the Consultative Council has adopted a special regulation for domestic workers, which is currently before the high authorities for decision. The Government also states that the Ministry of Labour, in collaboration with the private sector, has formulated an insurance document aimed at providing protection to domestic workers with respect to unpaid wages, as well as providing medical coverage, occupational disability coverage, legal services, etc. ***The Committee asks the Government to provide specific information on the regulations foreseen for agricultural and rural workers, and domestic workers, and whether it is envisaged that they will address specifically the issue of protection against discrimination for such workers with respect to the grounds enumerated in the Convention. The Committee asks the Government to provide information on the status of the adoption of such regulations, and to provide a copy of them once they are adopted.***

*Discrimination against migrant workers.* The Committee recalls that it has been raising concerns, along with the Conference Committee on the Application of Standards, regarding discrimination against migrant workers, in particular the risk of exploitation and abuse of migrant workers due to the sponsorship system. The Committee welcomes the Government's acknowledgement that sponsorship provisions can lead to exploitation and abuse, and its commitment to abolishing the sponsorship system. The Government indicates further that the Ministry of Labour has taken several measures to provide more protection for migrant workers, including establishing a Department for the Welfare of Expatriate Workers, and adopting a regulation on recruitment companies, aimed at regulating migrant labour and protecting the rights of workers and employers. The Government also indicates that it has formulated a bilateral agreement to regulate the relationship between domestic workers and their employers, to safeguard the rights of both parties. The Council of Ministers has authorized the Minister of Labour to negotiate and sign such bilateral agreements with countries of origin. The Government considers that such measures will lead to the end of the sponsorship system in practice, before it is envisaged formally and legally. ***The Committee asks the Government to continue to provide information on the steps taken to bring an end to the sponsorship system, both in law and in practice, as well as on the impact of such measures. The Committee also requests information on the mandate of the Department for the Welfare of Expatriate Workers, including any role in inspection or dispute resolution, as well as on the conclusion of any bilateral agreements, and the contents of such agreements. The Committee also asks the Government to indicate whether any steps have been taken, as previously urged by the Committee, to follow up in a concerted manner on the issues relating to discrimination of migrant workers, including examining the occupations in which migrant workers are employed, their conditions of employment, and the particular situation of female domestic workers, and to make addressing discrimination against migrant workers an important component of the national equality policy.***

*Equal opportunity and treatment of men and women.* The Committee notes that in reply to the concerns raised previously regarding the significant occupational gender segregation, with women being concentrated in a narrow range of sectors, the Government provides very general information, including that women have excelled in education, that they have assumed some high-level posts, and are being trained in computer and information technology and other specialties. The Government also refers to a ministerial decision that was issued on the special requirement of women's employment in factories, and another on promoting home work for women. The Committee recalls that the objectives of the Ninth Development Plan (2010–14), include: “[increasing] the overall participation rate, particularly that of females, in an effort to enhance economic empowerment of women”; “promoting participation of women in economic activity, and providing the facilities required to increase their participation”; and “consolidating and enhancing qualitative progress in education of Saudi girls at all stages of education”. ***The Committee again asks the Government to provide specific information on the concrete measures taken pursuant to the Ninth Development Plan and the National Employment Strategy, to which the Government previously referred, to increase the labour market participation of women, including the training and facilities provided, as well as the measures taken to improve education for girls to expand their future employment opportunities, and the impact of such measures. The Committee also again asks the Government to take concrete measures to address occupational gender segregation, with a view to providing opportunities for women in a wider range of sectors and occupations, including higher level and decision-making positions, and in those areas that have been traditionally dominated by men, and to provide information on the results achieved. Please also provide information on the concrete measures taken to ensure that workers, employers and their organizations are aware that the law no longer prohibits women and men from working together, and the specific steps taken to address de facto workplace segregation. The Committee also requests information on the establishment, mandate and activities of the Higher National Committee for Women's Affairs, to which the Government previously referred.***

*Sexual harassment.* Recalling the concerns raised regarding the absence of legislation addressing sexual harassment, and the particular vulnerability of domestic workers to such harassment, the Committee notes the Government's acknowledgement that sexual harassment occurs in the work environment where both men and women work together, though the Government considers that such cases are limited due to prevailing customs and traditions. The Government also states that the prohibition of sexual harassment is being considered, and that the Ministry of Labour, through the Advisory Council for Women's Work, has been studying the issue of the rules “governing the morals of treatment among employees for the protection of men and women employees at work against immoral transgressions . . . . Such transgressions, breaches, mechanisms for complaints, as well as the penalties are currently being defined.” ***The***

***Committee asks the Government to provide information on the specific recommendations of the Advisory Council for Women's Work with respect to defining and prohibiting sexual harassment, and the specific follow-up given to such recommendations. The Committee hopes that the Government will soon be in a position to report progress in explicitly defining and prohibiting both quid pro quo and hostile work environment harassment in employment and occupation, including for domestic workers, and asks the Government to provide detailed information in this regard.***

***Restrictions on women's employment.*** Recalling the protective measures set out in section 149 of the Labour Code, confining women to jobs that are "suitable to their nature", the Committee notes the Government's indication that, while it does not consider this provision to be discriminatory, the need to repeal the provision is being seriously considered in the context of draft amendments to the Labour Code. The Committee also recalls that the criteria governing work that can be undertaken by women remains regulated by paragraph 2/A of Council of Labour Force Order No. 1/19M/1405 (1987), which establishes the following criteria for women to work: (a) the need for the woman to work; (b) permission of her guardian; (c) suitability of the work to a woman's nature and not distracting with regard to her household and marital duties; (d) sex-segregated workplace; and (e) women's compliance with notions of dignity and modesty and Islamic dress code. ***Recalling that protective measures limiting women's access to employment constitute obstacles to the recruitment and employment of women, the Committee urges the Government to amend section 149 of the Labour Code, and repeal paragraph 2/A of Council of Labour Force Order No. 1/19M/1405 (1987), with a view to ensuring that any protective measures are strictly limited to maternity protection. The Committee also again asks the Government to amend the Order of 21 July 2003 approving women's participation in international conferences suitable to them, to ensure that women are able to participate in international conferences in the course of employment and occupation on an equal footing with men.***

***Enforcement.*** Recalling the concerns raised regarding the inadequacy of the dispute resolution mechanisms in addressing issues of discrimination, including for migrant workers, the Committee notes that the Government stresses the importance of the continuous training provided to judges and labour inspectors, and refers again to Royal Decree No. 8382/mb of 28/10/1429 (2008) which provides for the establishment of women's units in courts and justice secretariats under the supervision of an independent women's administration. The Government, however, once again indicates that there have been no complaints relating to discrimination in employment and occupation. The Committee recalls that the absence of cases is likely to indicate a lack of an appropriate framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals (see General Survey, 2012, paragraph 870). ***Noting the absence of complaints regarding discrimination, the Committee asks the Government to take steps to ensure there are accessible avenues for bringing and addressing cases of discrimination in employment and occupation, and to raise awareness of such procedures. Please also provide specific information in this regard, as well as on the implementation of Royal Decree No. 8382/mb. The Committee again requests the Government to clarify whether it is envisaged that women will be included on the Human Rights Commission and the courts, having the same status and responsibilities as men, and to provide information on any progress made in this regard. The Committee also asks the Government to provide specific information on the nature of the training provided to judges and labour inspectors, particularly as it relates to equality and non-discrimination in employment and occupation.***

## Sierra Leone

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)***

***Article 1(1)(b) of the Convention.*** The Committee notes with *interest* the adoption of the Prevention and Control of HIV and AIDS Act, 2007, section 23 of which prohibits discrimination on the grounds of actual, perceived or suspected HIV status in access to employment, and also with respect to transfer, promotion and termination. ***The Committee asks the Government to provide information on the practical application of section 23 of the Prevention and Control of HIV and AIDS Act of 2007, including any exceptions permitted under subsection 2. Please provide copies of any relevant judicial or administrative decisions.***

The Committee notes with *regret*, however, 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.*

## Sri Lanka

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)**

The Committee notes the Government's report in reply to the request made by the Conference Committee on the Application of Standards in June 2012. The Committee also notes the observations by Education International (EI) and the All Ceylon Union of Teachers (ACUT) dated 31 August 2012.

*Article 1 of the Convention. Work of equal value.* In its previous comments, the Committee expressed concern regarding the absence of legislation providing for equal remuneration for men and women for work of equal value. The Committee recalls that the rights regarding wages arising from the wage boards and collective agreements appeared to be limited to equal wages for the same or substantially the same work, which is narrower than the principle set out in the Convention, which encompasses not only the same or substantially the same work, but also allows for the comparison of jobs that are of an entirely different nature, but which are nevertheless of equal value (see General Survey on fundamental Conventions, 2012, paragraph 673). The Committee notes the observations by EI and the ACUT calling on the Government to take action to enact national legislation speedily, in consultation with the social partners in different sectors of employment, to ensure full implementation of the Convention. ***The Committee again urges the Government to take steps to give full legislative effect to the principle of equal remuneration for men and women for work of equal value. It hopes that progress will be made in the near future, and asks the Government to provide specific information on the concrete steps taken in this regard.***

*Additional emoluments.* The Committee notes the Government's interpretation that the practice by certain employers in rural areas of providing meals, which are only provided to male workers, does not concern payment in kind under the Convention. The Committee also notes that the Government repeats that there are no national legal provisions for payment of wages in kind. The Committee recalls that the purpose of the broad definition of "remuneration", in particular, the reference to "any additional emoluments whatsoever", enshrined in *Article 1(a)* of the Convention is to capture all elements that a worker may receive for his or her work including additional allowances paid in kind, such as meals and housing facilities (General Survey, 2012, paragraphs 686, 690–691). ***The Committee again asks the Government to take measures to ensure that, in practice, all emoluments, whether in cash or in kind, are granted or paid without discrimination based on the sex of the worker, and to provide specific information on steps taken in this regard.***

*Article 2. Wage boards.* The Committee recalls that sex-specific terminology remains in use in the wage board ordinances, and notes the Government's indication that the wage boards are reviewing the terminology with a view to eliminating it. The Committee also recalls that wage rates are set for a number of sectors through the wage boards, and that the classification of wages in various trades is differentiated based on the classification of categories such as "unskilled" "semi-skilled" and "skilled". With regard to the Committee's previous request regarding the process of determining minimum wage rates, the Government states that the classification of categories are based on factors such as education, knowledge and skills, etc. required to perform jobs. The Government also indicates that the social partners are involved in the process of fixing wages, and that there is no gender wage discrimination. The Government adds that certain occupations such as professionals and clerks, in which women constitute more than 50 per cent, are relatively highly paid, and therefore it is not shown that lower wages are set for sectors predominantly employing women. The Committee notes the statistical information provided by the Government on the share of men and women disaggregated by occupational group and sex in 2010: men constituted 91 per cent of plant and machine operators and assemblers; 76.3 per cent of senior officials and managers; and 74.1 per cent of proprietors and managers of enterprises. However, the Committee notes that the Government has not provided information regarding the respective level of wages for the different categories of the various sectors and trades, which would assist the Government and the Committee to assess the nature, extent and evolution of wage inequalities. ***The Committee asks the Government to take steps to ensure that rates of wages fixed by the wage boards are based on objective criteria free from gender bias, so that the work in female dominated sectors is not being undervalued compared to male dominated sectors. The Committee also asks the***

**Government to provide information on the progress made in ensuring the use of gender neutral terminology in defining the various jobs and occupations in the wage board ordinances. The Committee again urges the Government to compile and analyse statistics on the respective earnings of men and women in the different occupational categories in the public and private sectors and to provide information on measures taken to reduce the gender pay gap.**

*Wage policy.* The Committee previously noted the Government's intention to review the wage policy, to simplify the procedures for wage setting, and to establish a national minimum wage system. It recalls the Government's indication that the Cadre and Salary Commission was mandated to determine and revise the cadre and salary structure in the public service. The Committee notes the Government's indication that discriminatory wage policy concerning certain categories of the public sector under the Public Administration Circular 6/2006 has already been abolished, but no further information has been provided on the revision of the cadre and salary structure in the public sector. With respect to the private sector, the Government states that it is still under discussion at the National Labour Advisory Council, including discussions as to a national minimum wage system. **The Committee asks the Government to provide information on the progress made in developing a new wage policy, and to provide information on how the policy will promote and ensure the principle of equal remuneration for men and women for work of equal value in both the public and private sectors.**

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)**

The Committee notes the continuing human rights violations reported and the ongoing climate of violence (Report of the United Nations Secretary-General, A/HRC/21/32, 25 September 2012). 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 Human Rights Council condemned and expressed profound concern at the grave and systematic human rights violations in the Syrian Arab Republic (Resolution by the Human Rights Council at its 17th special session on the human rights situation in the Syrian Arab Republic, 23 August 2011 – A/HRC/S-17/2) and regretted the lack of progress made in the political reform process. The Committee recognizes that, without an inclusive, credible and genuine dialogue conducted in an environment without fear and intimidation, and without effective protection of human rights, the implementation of the Convention is seriously hindered, if not rendered impossible. However, given that the Government's report contains no reply to its previous comments, it is bound to repeat its previous observation, which read as follows:

*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.

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

## Turkey

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)**

The Committee notes the observations of the Turkish Confederation of Employer Associations (TİSK), which were attached to the Government's report.

*Training and awareness raising.* On several occasions the Committee has asked the Government to undertake awareness-raising and training activities specifically addressing the principle of equal remuneration for work of equal value, as set out in the Convention and in the Labour Act. The Committee notes that according to the Government, the Prime Ministry Circular on Increasing Women's Employment and Achieving Equality of Opportunity No. 2010/14 has the objective of strengthening the socio-economic status of women, achieving equality between women and men in social life, increasing the employment of women and ensuring equal wages for men and women. It also creates a National Monitoring and Coordination Committee on Employment of Women. The Government further indicates that the gender equality branch of the General Directorate of Disadvantaged Groups created within the Ministry of Labour and Social Security is

responsible for raising awareness regarding measures to promote and apply the principle of equal pay for men and women. While taking due note of the National Action Plan on Gender Equality (2008–13), the above initiatives and structures, as well as the information on activities to promote greater access of women to employment in general, the Committee notes the absence of information on any concrete awareness-raising activities regarding the principle of the Convention. ***The Committee urges the Government to carry out, in consultation with workers' and employers' organizations, specific activities, including activities carried out by the gender equality branch, to improve understanding and raise awareness among relevant target groups, including labour inspectors and judges, of the principle of equal remuneration for men and women for work of equal value, and to report in detail on the progress made in this regard.***

***Labour inspection.*** Regarding the ability of the labour inspection services to identify and establish data on the number, nature and outcome of infringements of section 5(4) of the Labour Act with regard to equal remuneration for men and women for work of equal value, the Committee notes the Government's indication that complaints-based investigations comprise the major part of the inspections, for which no classification of violations exist. Hence, data on the number, nature and outcomes of cases addressed by the labour inspectorate under section 5(4) are unavailable. ***The Committee stresses the need to collect and publish information on the nature and outcome of discrimination and equal remuneration complaints and infringements, as a means of raising awareness of the legislation and of the avenues for dispute resolution, and in order to examine the effectiveness of the procedures and mechanisms, and asks the Government to take appropriate measures to this end. Recalling that inadequate supervision by the labour administration may be one of the reasons for the persistence of unequal pay between men and women, the Committee asks the Government to take adequate measures to increase the capacity of labour inspectors to prevent, detect and remedy infringements of section 5(4) of the Labour Act.***

***Article 3 of the Convention. Objective job evaluation.*** The Committee welcomes the information provided by TİSK on the training and use of job evaluation by its affiliates, in particular the information that the Metal Industry Job Classification System (MIDS) was revised in July 2007 to bring it into line with new job structures and that workplace visits and presentations were given to introduce the system during 2008–10. It also notes the information provided by TİSK regarding the usefulness of the Occupational Proficiency System for determining remuneration. The Committee further notes the Government's indication that the draft Turkish Code of Obligations includes provisions regarding the Convention and is being discussed by the General Assembly of the Grand National Assembly. ***The Committee recalls the importance of developing and implementing objective job evaluation methods to address persistent gender pay gaps, and asks the Government to take specific steps to promote such methods as envisaged in Article 3 of the Convention, in the public and the private sectors. In this context, the Committee also asks the Government to provide specific information on the measures taken, including for example in the context of the draft Turkish Code of Obligations, to ensure that equal remuneration for men and women for work of equal value is made an explicit objective of any job evaluation.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)***

The Committee notes the observations of the Turkish Confederation of Employer Associations (TİSK) and the Confederation of Turkish Trade Unions (TÜRK-İS), which were attached to the Government's report.

***Articles 1 and 2 of the Convention. Discrimination based on political opinion.*** For a number of years the Committee has been requesting the Government to provide information on the practical application of the Anti-Terrorism Act and the Penal Code in cases involving journalists, writers and publishers expressing their political opinions. The Committee notes that according to TÜRK-İS, hundreds of journalists have been arrested or convicted because of their views; they also face lawsuits due to their political opinions. The Committee notes with ***regret*** that once again the Government has not provided any information on this issue and recalls that when protecting workers against discrimination with regard to employment and occupation on the basis of political opinion, the Convention implies that this protection shall be afforded to them in respect of activities expressing or demonstrating opposition to the established political principles and opinions – since the protection of opinions which are neither expressed nor demonstrated would be pointless (see General Survey on equality in employment and occupation, 1988, paragraph 57, and General Survey on fundamental Conventions, 2012, paragraphs 805, 832 and 833). ***The Committee requests the Government once again to provide information on the number and outcome 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 take the necessary measures, including legislative measures, to ensure that no journalist, writer or publisher is restricted in the exercise of their employment or occupation because of the political opinions expressed by them.***

***Article 2. Equality of opportunity and treatment for men and women.*** The Committee notes the information provided by the Government according to which the Prime Ministry Circular No. 2010/14 on increasing women's employment and achieving equality of opportunity has the objective of strengthening the socio-economic status of women, achieving equality of men and women in social life, increasing the employment of women and ensuring equal wages for men and women, and creates a National Monitoring and Coordination Committee on the Employment of Women. The Committee further notes the establishment of the Parliamentary Commission on Equality of Opportunities for Women and

Men and the adoption of the National Action Plan on Gender Equality (2008–13) which has the objectives of improving the employability of women, ameliorating the situation of rural women workers and fighting against gender discrimination, and which contains various strategies to improve women's employment situation. The Government further indicates that in the context of the Strategic Plan 2008–12 prepared by the Directorate General on the status of women, "women-men equality and social gender equality training programmes" have been implemented, regional workshops were organized in 2009 and 2010, and a survey on the impact of already executed projects on employment and entrepreneurship for women by public institutions and non-governmental organizations is being carried out. The Government indicates that measures have also been taken in order to ensure that the Turkish Employment Organization provides a more efficient public employment service and facilitates access to more and better jobs for women. The Committee further notes the various projects and activities organized in order to raise awareness and to provide women with training mentioned by the Government in its Fourth National Report on the Implementation of the Revised European Social Charter submitted to the Committee on Social Rights of the Council of Europe on 16 February 2012 (RAP/RCha/TU/IV(2012)). The Committee further notes that the Bill concerning parental leave is currently before the National Assembly. Furthermore, the Committee notes that according to TİSK 30,986 women benefited from the incentives provided by the Government in 2009.

According to the statistical information submitted by the Government with respect to education, the Committee notes that the rate of school attendance by girls and boys at primary school was similar to the rate in 2010. However, the enrolment of girls in secondary school was 62.21 per cent in 2010 compared to 67.55 per cent of boys in the same period. The Committee also notes the information concerning the high participation of women in university studies.

While taking due note of the range of policies and measures adopted by the Government, the Committee observes that the Government provides scarce information on the concrete impact of these measures in increasing the participation of women in the labour market. Indeed, according to the statistics provided, it continues to be very low (for example 32,513 men and 6,668 women in the manufacture of leather and related products, 27,192 men and 6,658 women in the manufacture of paper and related products). The Committee notes that TÜRK-İS refers to the fact that traditional gender roles restrict women's choice of employment and occupation and segregates them in low paid and intensive working jobs. In this regard, the Committee observes that, according to the information provided by the Government, women appear to be concentrated in the education and health services sectors, the only sectors where their participation is higher than that of men. Furthermore, although the participation of girls in education has considerably increased in the last years, this does not seem to have had a consistent impact in their inclusion in the labour market.

The Committee highlights the importance of the Government continuing to take proactive policies and measures in order to overcome the persistent inequality between men and women in employment and occupation and to ensure that the girls that enrol in the education system today will be able in the future to participate fully in all economic sectors and occupations without discrimination. ***The Committee requests the Government to provide concrete information in accordance with Article 3(f) of the Convention on the results achieved by all the programmes and measures adopted, including those adopted in the framework of the National Action Plan on Gender Equality (2008–13). Please include specific information concerning women in rural areas and women over 45 years of age. The Committee further requests the Government to continue 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 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. The Committee notes that the Government refers to the authorities responsible for dealing with the admission and registration as well as the expulsion of students but does not provide the information requested previously. The Committee understands that, according to the information from the website of the National Assembly, the Committee on Equality of Opportunities for Women and Men has examined a bill concerning freedom of dressing in the universities. The Committee once again recalls that while the existing prohibition of head coverings includes all forms of coverings and applies to men and women, these measures may have a discriminatory effect on women with regard to their access to university education. ***The Committee therefore requests the Government to take more active steps to obtain 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. Please also provide information on any bill concerning freedom of dressing examined and discussed by the Committee on Equality of Opportunities for Women and Men, the result of such examination and any follow up thereto.***

***Articles 1, 2 and 3. Discrimination in respect of recruitment and selection.*** For a number of years, the Committee has been referring to the fact that section 5(1) of the Labour Code which prohibits any discrimination based on language, race, sex, political opinion, philosophical belief, religion and sect or similar reasons in the employment relationship, does not prohibit discrimination at the recruitment stage. The Committee had noted, notwithstanding that pursuant to section 122 of the Turkish Penal Code 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 previously requested the Government to provide information on the number, nature and outcome of criminal proceedings undertaken under



section 122 of the Penal Code and to indicate whether persons considering themselves victims of discrimination in recruitment could bring complaints under section 122 of the Penal Code and whether they could obtain compensation or other remedies. The Committee observes that the Government provides no concrete information on this issue. However, according to the TİSK there is no possibility for persons who are victims of discrimination to claim compensation on the basis of section 122 of the Penal Code. While recognizing the important role of penal sanctions against those employers responsible for acts of discrimination, as they can be an effective deterrent for these kind of acts, the Committee highlights that discrimination causes material and moral harm to those that have been discriminated against, it is important that the victims of discrimination have access to judicial proceedings and benefit from suitable remedies (see General Survey, 1988, paragraphs 227 and 228, and General Survey, 2012, paragraphs 884–886). ***The Committee requests the Government to take measures so as to ensure that victims of discrimination in respect of recruitment and selection have access to adequate procedures and remedies and to provide information thereon. Please also provide information on the number, nature and outcome of criminal proceedings under section 122 of the Penal Code.***

***Enforcement.*** In its previous comments the Committee referred to the persistent discrimination denounced by trade unions and requested the Government to provide information on whether the labour inspectorate had dealt with any cases under section 5 of the Labour Code as well as to indicate whether the courts had decided any such cases. The Committee notes that according to the latest comments from TÜRK-İS the only remedies available for discrimination are in the context of lengthy and expensive legal proceedings. It further indicates that the burden of proof falls on the worker and that obtaining reinstatement in cases of dismissal is very difficult. The Committee notes that the Government provides no concrete information in this respect. The Committee highlights the importance of raising awareness of the relevant legislation, enhancing the capacity of the competent authorities, including judges, labour inspectors and other public officials, identifying and addressing cases of discrimination and also examining whether the applicable substantive and procedural provisions, in practice, allow claims to be brought successfully. The Committee also stresses the need to collect and publish information on the nature and outcome of discrimination complaints and cases, as a means of raising awareness of the legislation and of the avenues for dispute resolution, and in order to examine the effectiveness of the procedures and mechanisms (see General Survey, 2012, paragraph 871). ***The Committee requests the Government to provide information on the complaints related to the implementation of section 5 of the Labour Code dealt with by the Labour Inspectorate as well as the cases brought before the judicial authorities. Please indicate the number, nature and outcome of such cases, including the number of reinstatements, and provide information on any assessment carried out on the effectiveness of the existing procedures, including the impact of the burden of proof, as well as any awareness-raising or capacity-building measures adopted.***

***Articles 1, 2 and 3(d). Application of the Convention in the civil service.*** The Committee notes that the Government reiterates that civil servants are appointed on the basis of results of a centralized examination throughout the country. The Government further indicates that this selection is carried out in the framework of the “General Regulation on the examinations to be executed from those who shall be appointed to the public services for the first time” and the “Procedures and principles of the recruitment of workers in the public institutions and establishments” of 1 November 2009. According to the Government, this recruitment is done without any discrimination on the ground of sex, and career promotions are decided on the basis of prior examination. Furthermore, the Government indicates that positive measures are taken in favour of women to give them preference in certain posts related to “child improvement” and social services. The Committee notes, notwithstanding, that according to statistics provided by the Government in its latest report, there were 1,148,001 men and 592,923 women in the public service. The Committee considers that where measures are adopted in order to overcome the low participation of women in the public service, these measures should permit women to have access to all jobs at all levels including high-level jobs and those with career prospects. Moreover, measures that respond to historical attitudes and stereotypes regarding women’s and men’s aspirations, preferences and capabilities which increase or accentuate the existing sex segregation in the labour market should be avoided. ***The Committee requests the Government to take proactive measures to encourage women’s participation in the civil service and to address any allegations of gender discrimination in designations for positions or career promotion in the civil service and to report on the results achieved. It also requests the Government to ensure that both women and men can participate in practice in the examinations for different positions in the civil service on an equal footing. Please provide detailed information, disaggregated by sex, on how many people participate in these examinations and for which position and how many are designated for the different positions in the civil service.***

In previous comments, the Committee referred to security investigations and expressed concern that they might lead to exclusions from civil service employment. The Committee understands from the Government’s reply that although the administrative courts may adopt a decision regarding exclusions from the civil service, these decisions constitute a mere statement that will not necessarily have an impact on the recruitment of a candidate. ***Noting that the Government does not provide information on the number of administrative decisions concerning security investigations on candidates for civil service positions, the number of administrative appeals against these decisions by those allegedly excluded from civil service on the basis of security investigations and the outcomes of those proceedings, the Committee reiterates its request to the Government to provide detailed information in this regard.***

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

## Bolivarian Republic of Venezuela

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** *(ratification: 1971)*

The Committee notes the observations of 14 August 2012 of the Independent Trade Union Alliance (ASI) objecting that the Organic Labour Act (LOT), adopted through Decree No. 8938 on 7 May 2012, was not debated in Parliament. The ASI asserts in particular that the definition of sexual harassment in the LOT is incomplete because it does not include a reference to hostile working environment. The Committee notes that the ASI also refers to the status of women in the labour market stating that they are affected by unemployment, job instability and a lack of education. *The Committee requests the Government to provide its observations on these matters.*

## Yemen

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** *(ratification: 1969)*

*National policy on equality of opportunity with respect to political opinion, national extraction and social origin.* The Committee notes that no information has been provided by the Government with respect to 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. The Committee recalls that the primary obligation of States that have ratified this Convention is to declare and pursue a national equality policy, and that the State cannot remain passive and implementation is measured by the effectiveness of the national policy and the results achieved (General Survey on fundamental Conventions, 2012, paragraph 734). *The Committee therefore asks the Government to provide 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 also asks 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.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 100** (Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia: Norfolk Island, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Belgium, Belize, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, China: Macau Special Administrative Region, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, France: French Polynesia, France: New Caledonia, Germany, Ghana, Grenada, Guinea, Guyana, Haiti, Hungary, Iceland, India, Ireland, Israel, Italy, Kazakhstan, Nigeria, Panama, Rwanda, Samoa, San Marino, Sierra Leone, Singapore, Sri Lanka, Syrian Arab Republic, Turkey, Uganda, Yemen); **Convention No. 111** (Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, China, China: Macau Special Administrative Region, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, France: French Polynesia, France: New Caledonia, Germany, Ghana, Grenada, Guinea, Guyana, Haiti, Hungary, Iceland, India, Ireland, Israel, Italy, Republic of Korea, Kyrgyzstan, Liberia, Luxembourg, Mongolia, Nicaragua, Nigeria, Panama, Rwanda, Samoa, San Marino, Turkey, Uganda, Yemen); **Convention No. 156** (Albania, Bulgaria, Croatia, Ethiopia, Finland, France, Guinea, Iceland, Japan, Niger, Norway, Peru, Portugal, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Sweden, The former Yugoslav Republic of Macedonia, Yemen).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 111** (France: French Southern and Antarctic Territories).

## Tripartite consultation

### Botswana

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)**

*Effective tripartite consultations required by the Convention.* The Committee notes the Government's report received in September 2012 in reply to the 2009 observation. The Government indicates that section 143 of the Employment Act was amended in 2010 to increase the functions of the Labour Advisory Board to include advising and consulting the Minister on international labour standards. At the Labour Advisory Board meeting held on 26 January 2012, the Government reports that the Board discussed the possible ratification of the three governance Conventions not ratified by Botswana: the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). The Board was also informed of the HIV and AIDS Recommendation, 2010 (No. 200), the Domestic Workers Convention, 2011 (No. 189), and the Domestic Workers Recommendation, 2011 (No. 201). The Government indicates that Recommendation No. 200 was launched by the Minister of Labour and Home Affairs on 29 November 2011 and the social partners and other stakeholders were involved. In response to the Committee's request on the arrangements made for the financing of training on the consultative procedures, the Government indicates that a workshop on reporting on international labour standards was held in September 2012, which was facilitated by the standards specialist at the ILO Pretoria Office and included the social partners and other relevant stakeholders. The Government further indicates that efforts will be made to finance more necessary training in the future, funds permitting. *The Committee invites the Government to continue to provide information on the consultations held on each of the matters concerning international labour standards listed in Article 5(1) of the Convention, and requests that the Government continue to provide information on the steps taken towards ratifying the governance Conventions. The Committee hopes that the Government will provide information regarding its communications with the representative organizations of employers and workers, including the names of these organizations.*

### Burundi

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)**

*Tripartite consultation required by the Convention. Technical assistance to help member States fulfil their reporting obligations and comply with the provisions of the Convention.* The Committee notes the comments by the Trade Union Confederation of Burundi (COSYBU) submitted to the Government in September 2012. The COSYBU points out that, despite efforts to introduce a culture of social dialogue, there is still a long way to go. The Committee notes with *regret* that it has been unable to examine a report from the Government since 2007. *Referring once again to its 2007 observation, it requests the Government to submit a report containing detailed information on the content and results of tripartite consultations held since November 2007 on questions concerning international labour standards, and in particular on the reports to be made to the ILO as well as on the re-examination of unratified Conventions and Recommendations (Article 5(1)(c) and (d)).* The Committee draws the Government's attention to the possibility of availing itself of the ILO's technical assistance to fill the gaps in the implementation of the Convention.

*[The Government is asked to reply in detail to the present comments in 2013.]*

### Chad

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its 2009 observation which read as follows:

*Articles 2 and 5(1) of the Convention. Consultation mechanisms and effective tripartite consultations required by the Convention.* The Committee notes the Government's report received in October 2009. The Government refers to a Higher Committee for Labour and Social Security which is tripartite in composition. The Committee notes the Government's statement that no information is available on the consultations held during the period covered by the report on each of the items set out in Article 5(1). The Committee refers to the comments that it has been making since its examination of the first report and expresses the conviction that the Government and the social partners should endeavour to promote and strengthen tripartism and social dialogue on the matters covered by the Convention. The Committee refers to the 2008 Declaration on Social Justice for a Fair Globalization, which reaffirms that "social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards". *The Committee therefore hopes that the Government's next report will contain detailed information on the consultations held on all the items covered*

by Article 5(1) of the Convention, and on the other points raised in its previous observations in relation to Articles 4 and 6 of the Convention.

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

## Colombia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)**

*Strengthening of social dialogue and tripartite consultations.* In its observation of 2011 the Committee expressed its conviction that the Government and the social partners should endeavour to take tangible measures to promote and reinforce tripartism and social dialogue on matters relating to international labour standards covered by the Convention. The Government's report received in August 2012 states that on 24 May 2012 a tripartite Subcommittee on International Labour Matters was set up in the context of the Standing Committee for Dialogue on Wage and Labour Policies. The Committee notes with *interest* that one of the tasks of this Committee is to examine and be consulted on the subjects covered by Article 5(1) of the Convention. The Government also states that consultations were held with the social partners and in April 2012 the Domestic Workers Convention, 2011 (No. 189), was submitted to the National Congress for ratification. The social partners were also consulted on the submission of 13 Conventions and a Protocol.

The National Employers' Association of Colombia (ANDI) indicates in its observations received in September 2012 that, in addition to the Standing Committee for Dialogue on Wage and Labour Policies, there are other forums for dialogue in which tripartite discussions are held on labour standards at national and international level. The International Organisation of Employers (IOE) also emphasizes the progress made in social dialogue and the many ways in which rapprochement has taken place between the social partners. Moreover, the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) state in a joint communication of August 2012 that effective consultations should be held on an equal footing which ensure the fair participation of the most representative trade unions in all action relating to participation of the State vis-à-vis the ILO. The CUT states in an individual communication of August 2012 that the trade union movement is not only willing to engage in dialogue but also to support the ratification and implementation of international labour standards. The CUT drew up a list of pending issues with respect to which the ILO supervisory bodies have requested information in the reports on ratified Conventions.

The Committee refers to the resolution on tripartism and social dialogue adopted by the Conference at its 90th Session (2002), which emphasizes the fact that for tripartite consultations to be successful, the participants must demonstrate the necessary skills for social dialogue (capacity to be aware of the positions of the other parties, respect for each participant, abiding by commitments made, and a willingness to resolve differences). Furthermore, the Committee notes that the 2008 ILO Declaration on Social Justice for a Fair Globalization identified Convention No. 144 as one of the most significant instruments in terms of governance. The Committee therefore expresses its conviction once again that there are new grounds for continuing to bring together the social partners and further intensify tripartite consultations. *The Committee invites the Government to send information in its next report on the activities of the Tripartite Subcommittee on International Labour Matters and other consultations held on the subjects covered by Article 5(1) of the Convention.*

## Costa Rica

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)**

*Tripartite consultations required by the Convention.* The Committee notes the communication of the Confederation of Workers Rerum Novarum (CTRN), dated 30 August 2011. The CTRN indicated that in 2011 the Government did not consult the CTRN prior to sending reports to the Committee of Experts on the application of the Labour Inspection Convention, 1947 (No. 81), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Employment Policy Convention, 1964 (No. 122), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Minimum Wage Fixing Convention, 1970 (No. 131). In the reply received in February 2012, the Government provided a copy of its letter dated 13 June 2011 forwarding to the representative organizations the comments of the Committee of Experts so that they could make the observations that they considered appropriate. The Committee also notes that on 26 August 2009 the Government forwarded a copy of the reports on ratified Conventions for the 2009 period to the office of the President of the CTRN and also to the presidents of other representative organizations. The Committee understands that the Government did not provide to the representative organizations the drafts of the reports before they were sent to the ILO.

The Committee recalls that the obligation to consult in advance the representative organizations concerning the reports that are to be made on the application of ratified Conventions, as established by Article 5(1)(d) of the Convention, must be distinguished from the obligation to provide copies of reports, set out in article 23(2) of the ILO Constitution. The Convention requires tripartite consultations to be held on questions arising out of the reports to be made to the ILO in relation to the application of ratified Conventions. These consultations must address the content of the replies to the

comments of the supervisory bodies. The tripartite consultations that are required by the Convention therefore have to be held during the process of the preparation of the reports. When written consultations are held, the Government should transmit to the representative organizations a draft report in order to gather their opinions some period before preparing its definitive report (see General Survey on Tripartite Consultation, 2000, paragraph 93). *The Committee invites the Government to provide information in its next report on the consultations held on each of the matters listed in Article 5(1) of the Convention. In particular, to ensure that the views of the representative organizations are taken into account, the Committee invites the Government to consider with the social partners the possibility of establishing a schedule for the preparation of reports (Article 5(1)(d) 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 with *regret* that the Government's report has not been received. In its observation of 2010, the Committee noted the ministerial orders adopted after consultation of the National Labour Council in order to apply the Labour Code and the reports of the extraordinary meetings of the National Labour Council held in July 2005 and March 2008. In a brief report received in June 2011, the Government indicated that it will provide relevant information in the future on the effective submission to Parliament of the 28 instruments adopted at the 13 sessions of the Conference held between 1996 and 2010. *The Committee refers the Government to its observation concerning the serious failure to submit the instruments adopted by the Conference with respect to the obligation established in article 19(5) and (6) of the ILO Constitution. It requests the Government to report on consultations held with the social partners concerning the proposals made to Parliament on the occasion of the submission of the instruments adopted by the Conference. The Committee hopes that 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 recalled in its previous observation that trade union elections were held for the fifth time between October 2008 and July 2009. *It requests the Government to indicate 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.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Djibouti

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)**

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 2008 direct request, which read as follows:

*Articles 1 and 3(1) of the Convention. Participation of representative organizations.* The Committee notes that, under section 215 of the Labour Code, the representative nature of trade union organizations shall be determined by the result of professional elections. *Referring to the issues concerning freedom of association dealt with by the Committee on Freedom of Association, as well as its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee requests the Government to specify the manner in which the representatives of employers and workers were chosen, enabling them to freely undertake the tripartite consultations required by Convention No. 144.*

*Article 4(2). Financing of training.* The Committee noted that two tripartite workshops have been organized. *The Committee hopes that the Government will be able to indicate in its next report the arrangements made for the financing of the necessary training of participants in the consultative procedures.*

*Article 5(1)(c) and (e). Tripartite consultations required by the Convention.* The Government indicates that, in accordance with section 3 of Decree No. 2008-0023/PR/MESN of 20 January 2008 regulating the organization and operation of the National Council for Labour, Employment and Vocational Training, the Council may give technical and legal advice on the proper implementation or possible denunciation of the international labour Conventions to which Djibouti is a party. *In this regard, the Committee requests the Government to provide information on the consultations held in the National Council for Labour, Employment and Vocational Training on each of the matters relating to international labour standards referred to in Article 5(1) of the Convention. Please also indicate whether tripartite consultations have been held on the ratification of the Workers' Representatives Convention, 1971 (No. 135), Termination of Employment Convention, 1982 (No. 158), and the Private Employment Agencies Convention, 1997 (No. 181).*

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

## Dominican Republic

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)**

*Tripartite consultations required by the Convention. Observations from trade union confederations.* The Committee notes the detailed report from the Government received in October 2012 and the new observations from the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD). In the observations sent to the Government in October 2012, the trade union confederations again express their concern at the fact that they did not receive the reports and questionnaires due from the Government. According to the trade union confederations, no institutional procedure was established for tripartite participation in the adoption, submission, ratification and application of international labour standards. The Government states in its report that it regrets that the trade union confederations have not received the reports by the deadline and in the form established by the Convention. The Committee notes that the Government undertakes to hold tripartite consultations with respect to the drafting of the reports called for under *Article 5* of the Convention. The Committee also observes that the consultations on international labour standards required by the Convention are not included in the information provided for by the Government on the consultations held in the Labour Advisory Council in 2010, 2011 and 2012. **The Committee invites the Government to ensure full compliance with the tripartite consultations required when preparing draft reports on the application of ratified Conventions (Article 5(1)(d) of the Convention). It also invites the Government to provide detailed information, in the next report due in 2013, on the consultations held on the matters relating to international labour standards provided for in Article 5(1) of the Convention.**

## Grenada

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

*Tripartite consultations required by the Convention.* The Committee notes the Government's brief report received in September 2012, in which it indicates that tripartism has existed in the country for many years, both in practice and in law. It also indicates that, although there are no legislative provisions with respect to the matters dealt with in Convention No. 144, the preparation of replies to Conventions and Recommendations and the composition of delegations to the International Labour Conference and regional and subregional conferences have included delegations from both the employers' and workers' organizations. The Committee further notes that the Labour Advisory Board, a tripartite body, meets at least once per month to discuss matters relating to labour. The Committee also notes that the Government's brief report does not discuss consultation activities pursuant to *Article 5 of the Convention*. **The Committee again must invite the Government to provide detailed information on the consultations held on each of the matters concerning international labour standards listed in Article 5(1) of the Convention. It also invites the Government to include information on the activities of the Labour Advisory Board on the matters covered by the Convention.**

## Guatemala

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1989)**

*Articles 2 and 5 of the Convention. Effective tripartite consultations.* As in its 2011 direct request, the Committee notes the extensive documentation regarding the representatives appointed to the Tripartite Committee for International Labour Affairs sent by the Government in a report received in September 2012. Under one of the items addressed by the Tripartite Committee in May 2012, proposals were made by the three sectors for setting up a Decent Work Programme in Guatemala. The Government also provides the convening letters, attendance lists and minutes of the meetings held between August 2011 and July 2012. **The Committee invites the Government to continue to send detailed information on the tripartite consultations held on the subjects relating to international labour standards covered by the Convention.**

*Observations on the application of the Convention.* The Trade Union Confederation of Guatemala (UNSI TRAGUA), together with the Confederation of Workers of Guatemala (CGTG) and the Trade Union Confederation of Guatemala (CUSG) sent a communication to the Government in September 2012 expressing reservations about the development of social dialogue and the effectiveness of the consultations held in the Tripartite Committee. The Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG), in a communication sent to the Government in September 2012, asserted breach of the Convention in connection with the transmission of reports by the Government and a policy to create forums for social dialogue. The MSICG refers specifically to the adoption in January 2012 of the Act on the Organization of the Economic and Social Council. **The Committee requests the Government to send its comments on the abovementioned observations.**

[The Government is asked to reply in detail to the present comments in 2013.]

## Guinea

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)**

*Effective tripartite consultations required by the Convention. Financing of training.* The Committee notes the Government's report received in July 2012. The Government indicates that the activities of the Labour and Social Legislation Advisory Committee (CCTLS) were suspended and only resumed in 2011. The Advisory Committee held its first session from 8 to 23 November 2011 on the rereading of the draft Labour Code. It proposes to conduct an exchange on the items placed on the agenda of the next session of the Conference. In reply to the Committee's latest comments, the Government indicates that the cost of CCTLS sessions are covered by the national development budget. The Government refers in its report to the activities conducted in the context of the regional programme for the promotion of social dialogue in francophone Africa, including the tripartite workshop on training in collective bargaining techniques and the training workshop for members of the steering committee of the National Forum on Social Dialogue held in 2010. **The Committee requests the Government to provide detailed information in its next report on the consultations held on the matters referred to in Article 5(1) of the Convention (reply to questionnaires, submissions to the National Assembly, re-examination of unratified Conventions and of Recommendations, reports to be made to the ILO) including information on the activities of the CCTLS in relation to the consultations required by the Convention (Articles 2 and 5). The Committee also requests the Government to describe, in its next report, the training activities which were conducted in relation to international labour standards (Article 4).**

[The Government is asked to reply in detail to the present comments in 2013.]

## Guyana

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)**

*Effective tripartite consultations.* The Committee notes the Government's very brief report received in May 2012 in reply to its previous comments. The Government indicates that the ILO Tripartite Committee is required to meet monthly but sometimes meetings are cancelled due to no quorum. The Government also reports that consultations on unratified Conventions have not been done seriously and this issue will be brought to the attention of the Subcommittee (Article 5(1)(c) of the Convention). The Committee refers to its 2012 direct request on the Unemployment Convention, 1919 (No. 2), in which it invited the Government and the social partners to contemplate ratifying more recent employment Conventions, that is, the Employment Service Convention, 1948 (No. 88), the Employment Policy Convention, 1964 (No. 122), and the Private Employment Agencies Convention, 1997 (No. 181). **The Committee invites the Government to include in its next report information on any development with regard to tripartite consultations on unratified Conventions (Article 5(1)(c) of the Convention).**

*Replies to questionnaires, submissions to the Assembly of Parliament and reports to be made to the ILO.* The Committee has been recalling for many years that certain subjects covered by Article 5(1) of the Convention (replies to questionnaires (a), submission of the instruments adopted by the Conference to the Assembly of the Parliament (b), and reports to be made to the ILO (d)) involve annual consultation. **The Committee hopes that the Government will be able to provide in its next report information on tripartite consultations held on the matters covered by Article 5(1)(a), (b) and (d).**

[The Government is asked to reply in detail to the present comments in 2013.]

## Indonesia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1990)**

*Tripartite consultations required by the Convention.* The Committee notes the information provided by the Government in August 2012. The Government indicates that, to date, national tripartite consultations have been effective. In application of Article 5(1) of the Convention, the Government reports that it is conducting tripartite consultations with the most representative organizations of employers and workers with respect to the replies to questionnaires concerning items on the agenda of the Conference, the annual reporting on the application of ratified and unratified Conventions, and the submission of new international labour standards adopted by the Conference to the House of Representatives. However, the Government indicates that not all issues regarding international labour standards are discussed at the National Tripartite Cooperation Institution given the amount of priority issues and matters to discuss in the field of manpower. Nevertheless, there are always consultations between the Government and employers' and workers' organizations at the national level, which are mostly members of the National Tripartite Cooperation Institution. **The**

*Committee invites the Government to include in its next report detailed information on the effective consultations held on each of the matters listed in Article 5(1) of the Convention, including information on the nature of any reports or recommendations made as a result of the consultations.*

## Ireland

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)**

*Tripartite consultations required by the Convention.* The Committee notes the information provided by the Government in its report received in October 2012, in which the Government states that it continues to comply with Convention No. 144, as outlined in previous reports. The Committee notes that the previous report was received in October 2005. The Government indicates that the Department of Jobs, Enterprise and Innovation continues to consult the Irish Business and Employers Confederation and the Irish Congress of Trade Unions in relation to ILO matters. Department officials meet with the national social partners regularly throughout the year to discuss departmental business, which can include discussions on ILO Conventions. The Government adds that all reports submitted to the ILO concerning Conventions are sent to the national social partners for their observations. No decision is made with respect to the ratification or acceptance of Conventions and Recommendations prior to the receipt and consideration of the views of employers' and workers' representatives. *The Committee invites the Government to provide updated information 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, and denunciation of Conventions (Article 5(1) of the Convention).*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Jamaica

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1996)**

*Tripartite consultations required by the Convention.* The Committee notes the Government's report received in September 2012. The Government indicates that the Labour Advisory Committee (LAC) meets on a quarterly basis to discuss matters concerning the labour market, legislation and policy. It further indicates that matters relating to *Article 5 of the Convention* are not usually individually addressed at LAC meetings. However, particular issues which arise at the International Labour Conference are discussed. The Committee notes that in early 2012, the Domestic Workers Convention, 2011 (No. 189), and issues relating to child labour were discussed at LAC meetings. 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 detailed information in its next report on the effective tripartite consultations held by the LAC on each of the matters concerning international labour standards listed in Article 5(1) of the Convention (replies to questionnaires, submissions to the competent authorities, re-examination of unratified Conventions and Recommendations, reports to be made to the ILO).*

## Jordan

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2003)**

*Articles 2 and 5 of the Convention. Consultation mechanisms and effective tripartite consultations required by the Convention.* In its 2011 observation, the Committee invited the Government to report on the content and outcome of the tripartite consultations held on the matters related to international labour standards. The Government states in its reply received in July 2012 that it will subsequently communicate information on further consultations held by the national Tripartite Committee which will be undertaken pursuant to *Article 5(1)* of the Convention. *The Committee requests the Government to provide detailed information on the operation of the consultation mechanism, specifying the activities of the Tripartite Committee on each of the matters related to international labour standards covered by Article 5(1) of the Convention, and indicating the nature of any reports or recommendations made as a result of the tripartite consultations.*

*[The Government is asked to reply in detail to the present comments in 2013.]*



## Kenya

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1990)**

*Effective tripartite consultations.* The Committee notes the Government's brief report received in August 2012 in reply to the observation formulated in 2010. In its previous observation, the Committee noted that the National Labour Board (NLB) discussed the following unratified Conventions: 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 (MLC, 2006), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the Work in Fishing Convention, 2007 (No. 188). In its report, the Government indicates that the NLB International Labour Standards Committee has not been able to discuss the ratification of the unratified Conventions due to other urgent matters. However, the tripartite committee will endeavour to discuss them during this financial year, pending the enactment into law of the new process of ratification of international instruments. The Government also indicates that comments from the NLB on instruments submitted to the National Assembly are still being awaited and will be reported back as soon as received. **The Committee invites the Government to provide information in its next report on consultations held within the National Labour Board on unratified Conventions and the outcome of such consultations (Article 5(1)(c)). It would also welcome receiving information on proposals which may have been made by the National Labour Board regarding the instruments adopted by the Conference at its 99th, 100th and 101st Sessions that were submitted to the National Assembly in August 2012 (Article 5(1)(b)). Please also provide information on the other matters covered by Article 5(1) of the Convention (replies to questionnaires concerning items on the agenda of the Conference and questions arising out of reports to be made on the application of ratified Conventions).**

*[The Government is asked to reply in detail to the present comments in 2014.]*

## Republic of Korea

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)**

*Tripartite consultations required by the Convention.* The Committee notes the report provided by the Government for the period from July 2010 to May 2012 and the observations submitted by the Federation of Korean Trade Unions (FKTU) in September 2012. It also notes the observations of the Korea Employers Federation (KEF), which were included in a position paper dated 8 August 2012. The Government reports that the International Labour Policy Council held meetings to discuss matters concerning the ratification of ILO Conventions. The Government further indicates that at a meeting held in December 2010, the Council approved a plan to pursue the ratification of the Unemployment Convention, 1919 (No. 2), the Forty-Hour Week Convention, 1935 (No. 47), the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), and the Occupational Cancer Convention, 1974 (No. 139). The Committee notes with **interest** that Conventions Nos 2, 47 and 139 were ratified in November 2011, along with the Radiation Protection Convention, 1960 (No. 115). The KEF indicates that the Government has held written discussions four times within the past five years to gather opinions from workers' and employers' representatives of the International Labour Policy Council on matters concerning the ratification of ILO Conventions, and undertook consultations at least once a year to discuss matters pertaining to *Article 5 of the Convention*. The FKTU indicates that the Government has not fully implemented *Article 5(2)* of the Convention, that is, to convene meetings of the International Labour Policy Council at least once a year. **The Committee invites the Government to include in its next report information concerning the content and outcome of the consultations held on each of the matters listed in Article 5(1) of the Convention, including information regarding the frequency and the framework of these consultations (Article 5(2)). It also invites the Government to continue to provide information on the activities of the International Labour Policy Council on the matters covered by the Convention.**

## Kuwait

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)**

*Effective tripartite consultations required by the Convention.* The Committee notes the reply supplied by the Government to its previous observation in a report received in August 2012. The Government indicates that the tripartite Consultative Committee for Labour Affairs established in 2010 has not yet held its first meeting due to the organizational problems experienced by the Ministry of Labour and Social Affairs in the last two years. It states that the fact that the tripartite Consultative Committee has not held any meetings does not mean that there are no effective tripartite consultations, as the establishment of the tripartite committee was made to enhance tripartite dialogue. **The Committee**

*invites the Government to indicate how effective tripartite consultations were held for the period 2010–12 on each of the matters relating to international labour standards set out in Article 5(1) of the Convention, stating their object and frequency, and also to indicate the nature of any reports or recommendations made as a result of the consultations.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## 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. ILO technical assistance.* In its 2010 observation the Committee invited 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 its reply of October 2012 the Government indicates that the criteria for representativeness of employers' and workers' organizations were established by Decree No. 211-490 of 6 September 2011 concerning trade union organizations and representativeness. The Government adds that the adoption of Decree No. 211-490 has been the subject of numerous discussion meetings within the National Labour Council (CNT) with a view to settling the problems linked to determination of the most representative employers' and workers' organizations. The Government further indicates that in the current period of crisis the CNT is endeavouring to discharge its mandate by focusing on subjects of direct interest to workers and employers. The Committee notes that the General Confederation of Workers' Unions of Madagascar (CGSTM), in its observations sent in August 2012, considers that the CNT has not been operating satisfactorily and that the CNT does not attach enough importance to ILO activities and to social dialogue, and the CGSTM affirms that, in certain cases, the opinions of the CNT have been ignored by the Government. The Committee notes that the social partners, faced with what they perceived to be a dysfunctional situation, called for ILO assistance to be requested in November 2011 in order to undertake a reform of the CNT. CGSTM declares that it is encouraging the Government to promote the use of tripartite consultations in accordance with *Articles 2 and 5* of the Convention. The Committee recalls that the 2008 ILO Declaration on Social Justice for a Fair Globalization recognizes Convention No. 144 as one of the instruments that is most significant from the viewpoint of governance. *The Committee hopes that the ILO technical assistance called for by the social partners can be provided and that the Government will then be in a position to provide detailed information enabling the Committee to establish that, as required by the Convention, effective tripartite consultations on international labour standards have taken place in practice. It hopes that the Government will be in a position to provide up-to-date and detailed information on the manner in which representatives of employers and workers have been chosen for the purposes of the Convention (Article 3 of the Convention) and on the content and outcome of tripartite consultations held on each of the matters referred to in Article 5(1).*

*[The Government is asked to reply in detail to the present comments in 2014.]*

## 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 2011 observation which read as follows:

*Tripartite consultations required by the Convention.* The Committee notes a brief report received in June 2011. The Government indicates that the Tripartite Labour Advisory Council, the Social Dialogue Council, and the Wages Advisory Council ensure effective tripartite consultations. The Tripartite Labour Advisory Council is in charge of advising the Ministry of Labour on all employment-related issues. *The Committee refers to its 2008 and 2010 observations and again asks the Government to submit a report containing detailed information on the tripartite consultations held on each of the matters related to international labour standards covered by Article 5(1) of the Convention. It also requests the Government to include information on the nature of any reports or recommendations made as a result of such consultations.*

*Article 5(1)(c) and (e). Prospects of ratification of unratified Conventions and proposals for the denunciation of ratified Conventions.* 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 tripartite consultations to re-examine unratified Conventions – such as Conventions Nos 169 and 176 – in order to promote, as appropriate, their implementation or ratification and to denounce outdated Conventions.*

## Mozambique

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1996)**

*Tripartite consultations required by the Convention. ILO technical assistance.* The Committee takes note of a brief report received in September 2012. The Government indicates that the Labour Advisory Commission's role is to promote social dialogue and partnership with respect to the Government's economic, social and labour policies. Negotiations to readjust national minimum wages and promote regulatory instruments, especially in the area of labour law, are conducted in the framework of social partnership. The Government also refers to consultation and social dialogue forums at the provincial level. **The Committee once again requests the Government to submit a report containing detailed and updated information on the tripartite consultations concerning each of the matters covered by Article 5(1) of the Convention (replies to questionnaires, submissions to the competent authorities, re-examination of unratified Conventions and Recommendations, reports to be made to the ILO). It also requests the Government to include information on the nature of the reports or recommendations resulting from these consultations. In addition, the Committee invites the Government to provide detailed information on the content and results of the forums at provincial level to which it refers. In addition, the Committee once again draws the Government's attention to the possibility of seeking technical assistance from the Office in order to enable the provision of detailed information, allowing the Committee to examine, as the Convention requires, whether tripartite consultations on international labour standards are effectively carried out (Article 5(1) of the Convention).**

[The Government is asked to reply in detail to the present comments in 2013.]

## 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 October 2012. The Government indicates that it has been promoting social dialogue on a bipartite and tripartite basis wherever and whenever possible. It recalls that tripartism has been firmly institutionalized and all the major policy decisions and legislative initiatives are the result of tripartite consultations and consensus. The Government reports that all committees established under the Ministry of Labour and Employment which are related to labour, industrial relations, occupational safety and health and child labour are tripartite in their composition. In addition, all matters related with the agenda of the International Labour Conference or articles 19 and 22 of the ILO Constitution are discussed with the social partners. The Government also reports that if any new problems or issues emerge in the future, they will also be sorted out through tripartite consultations and consensus. The Committee notes that the third National Labour and Employment Conference, held on 9–11 July 2012, was organized with technical and financial support from the ILO Nepal Office and concluded with the endorsement of a 15-point declaration. One point in the declaration refers to the development and promotion of good labour relations and the creation of a trusted tripartite environment. **The Committee 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). The Committee also asks the Government to include in its next report specific information on the content and outcome 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.**

[The Government is asked to reply in detail to the present comments in 2013.]

## Nigeria

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

*Consultations with representative organizations.* In reply to the comments formulated in 2006, the Committee notes the Government's brief report received in November 2012, in which it indicates that the National Labour Institutions Bill is still before the National Assembly. The Committee recalls 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. **The Committee 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 Government indicates in its report that its replies to questionnaires concerning items on the agenda of the International Labour Conference and comments on proposed texts are usually forwarded to the social partners for their input. It also states that social partners participate in the rendering of

reports. 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 content and outcome of tripartite consultations dealing with:**

- (a) **the Government's replies to questionnaires concerning items on the agenda of the 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 ILO Constitution.**

*Prior tripartite consultations on proposals made to the National Assembly.* The Committee recalls 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 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 to propose 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 refers to the observation formulated again this year on the constitutional obligations under article 19 of the ILO Constitution and 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 Government is asked to reply in detail to the present comments in 2013.]*

## 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.**

## Serbia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)**

*Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention.* The Committee notes the Government's detailed report received in September 2012 in response to the request made by the Committee in its 2011 observation and by the Conference Committee in June 2012. It also notes the observations submitted by the Trade Union Confederation Nezavisnost and the Confederation of Autonomous Trade Unions of Serbia (CATUS) in September 2012. The Committee notes the information provided by the Government indicating that, as a result of the submission procedures, it has the intention to ratify both the Maritime Labour Convention, 2006 (MLC, 2006), and the Domestic Workers Convention, 2011 (No. 189). The Government indicates that it submits a report each year on the implementation of ILO Conventions to the social partners and the Economic and Social Council. It adds that the opinions of the social partners are duly submitted to the ILO. With respect to the observations submitted by the Serbian Association of Employers, noted in the 2011 observation concerning the short deadline to provide comments on reports on the application of ratified Conventions, the Government replies that reports were submitted to all the social partners on 18 August 2011, with the deadline for submitting comments until 28 August 2011. Reports could not have been submitted earlier to the social partners due to delays in the delivery of contributions from other relevant institutions. The Government indicates that representatives of CATUS sought and were granted an extension of this deadline, and their comments were submitted by 15 September 2011. The Government adds that it has never happened that it does not accept a request to extend the deadline for the submission of contributions of any organization which is responsible for providing comments on the

implementation of ILO Conventions. To avoid such situations in the future, the Ministry of Labour and Social Policy will inform social partners that they can always request additional time to submit comments, if needed.

The Committee notes that Nezavisnost reiterates its prior concerns, that while a regulatory framework for social dialogue exists formally, the Government's report does not include information on the functioning of the consultative mechanisms nor information on the activities of the Economic and Social Council. In addition, the CATUS indicates that a number of legal projects were submitted to Parliament for adoption without the opinion of the Economic and Social Council. ***The Committee invites the Government to provide information with respect to the issues raised by the social partners. It also invites the Government to provide in its next report information on the operation of the consultation mechanism, specifying the activities of the Economic and Social Council on the matters related to international labour standards listed in Article 5(1) of the Convention. Please also indicate the frequency of consultations held and the nature of any reports or recommendations made by the Economic and Social Council on the matters covered by the Convention as a result thereof (Article 5(2)).***

The Committee notes that the Government provided an additional reply in late November 2012 to the comments from Nezavisnost. ***The Committee will examine this additional reply in 2013 at the same time it will consider the Government's further information requested above in this observation.***

## 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.***

## Uganda

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)***

***Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention.*** The Committee notes the communication of the National Organisation of Trade Unions (NOTU), which was transmitted to the Government in September 2012, concerning the application of the Convention. The NOTU indicates that the level of tripartism is still very low, especially on issues of labour standards and that the Government did not respond to their request to provide a copy of the report on the implementation of Conventions and Recommendations. ***The Committee requests the Government to transmit any comments it may wish to make in response to the observations of the NOTU.***

Furthermore, the Committee notes with ***regret*** 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 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 this field.***

***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 Government is asked to reply in detail to the present comments in 2013.]***

## Bolivarian Republic of Venezuela

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)***

*Communications from employers' and workers' organizations. Tripartite consultations required by the Convention.* The Committee notes the observations of the Independent Trade Union Alliance (ASI) sent to the Government in September 2011. It notes that according to the ASI, the information sent to the Committee of Experts has not been communicated to the workers' organizations, which affects their ability to make relevant observations on the application of ratified Conventions. In observations sent to the Government in September 2011, the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) likewise referred once again to the absence of any bipartite and tripartite consultations. FEDECAMARAS again urged the Government to establish social dialogue and tripartite consultation as a genuine and sure path towards the social and economic development of the country. FEDECAMARAS again noted the lack of any consultation in the framing and adoption of various legislative texts. In observations sent to the Government in September 2012, the Confederation of Workers of Venezuela (CTV) states that it asked the Government to inform it of the content of the reports sent to the Committee of Experts in 2012, but was not given the opportunity to make relevant observations. In observations sent to the Government in September 2012, FEDECAMARAS again reports failure to consult the most representative employers' association of the country when a number of important laws were promulgated, including the Organizational Act on Labour and Men and Women Workers, in May 2012. In a communication received in August 2012, the International Organisation of Employers (IOE) expressed support for the observations made by FEDECAMARAS, asserting that the facts they recounted are evidence of a total absence of social dialogue in the country. The IOE adds that the very existence of independent employers' organizations, particularly FEDECAMARAS, the most representative employers' association in the country, is at risk. In replying to the social partners' observations received in November 2012, the Government explains that, on 4 September 2012, the CTV received a digital copy of 11 reports prepared for 2012. The Government reports that a committee consisting of all sectors in the country was established to discuss the new Organizational Act on Labour. ***The Committee refers to its observation of 2010 in which it reiterated 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 again invites the Government to indicate 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 are taken into account, with particular reference to how its practice has evolved with regard to tripartite consultation on draft reports on the application of ratified Conventions (Article 5(1)(d)).***

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 144** (Armenia, Bahamas, Barbados, Belarus, Belize, Bulgaria, Burkina Faso, China, China: Macau Special Administrative Region, El Salvador, France: French Polynesia, Gabon, Greece, Iceland, India, Iraq, Israel, Japan, Latvia, Lesotho, Liberia, Malaysia, Mali, Mexico, Republic of Moldova, Mongolia, Montenegro, Namibia, Netherlands: Aruba, New Zealand, Nicaragua, Norway, Saint Vincent and the Grenadines, Trinidad and Tobago, Yemen, Zambia).

## Labour administration and inspection

### Angola

#### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)**

*ILO technical assistance and reform of the labour inspection system.* In its previous comments, the Committee requested the Government to keep the ILO informed of measures taken in the framework of the ongoing reform of the labour inspection system, particularly in respect of the recommendations made by the Office. The Government indicates that the implementation of the Institutional Development Plan is based on: (a) organic restructuring; (b) adequacy of human resources; (c) adequacy of infrastructure and means of action; and (d) institutional cooperation. It states that a draft organic statute on the general labour inspectorate has been prepared and submitted to the competent bodies for evaluation and approval.

The Committee also notes with *interest* the information provided in the Government's report and that contained in the 2010 and 2011 inspection reports, particularly concerning: (a) the recruitment by competition in 2011 of 78 new inspectors and the recruitment and initial training planned for 2012 of a further 58 inspectors; (b) the implementation of an initial 120-hour training course for labour inspectors on labour inspection and control activities, including an introduction to law and to occupational safety and health; (c) the organization of continuous training sessions, particularly in the areas of labour relations and occupational safety and health; (d) the acquisition in 2011 of 30 cars for use by local offices and the acquisition of another 30 planned for 2012; (e) the supply of computers to central and local offices and the supply of 50 laptops for 50 country units planned for 2012; (f) the renewal of much of the office furniture in central offices and in the Luanda local services; (g) the development of a data base, which, the Government hopes, will be finalized by the end of 2012; (h) the holding of a conference on the new occupational safety and health challenges organized with ILO support and attended by 50 labour inspectors, as well as employers' and workers' representatives; (i) the participation of inspectors from the ministries of industry, of health and of the interior in a visit to facilities of a nitrogen production plant; (j) the launching in 2010 and 2011 of campaigns on occupational accident and disease prevention in the civil construction sector; (k) the holding of and participation in conferences and seminars organized by enterprises on occupational safety and health, occupational accident and disease prevention and the responsibility of employers and workers in the application of standards on occupational safety and health. *The Committee requests the Government to continue providing information on the measures taken in the framework of the reform of the labour inspection system, particularly the measures to follow-up on the recommendations made in the context of ILO assistance for the implementation of the legislative reforms, describing their impact on the application of the Convention in the areas of occupational safety and health, conditions of service (remuneration and labour inspectors' career prospects), the functions of labour inspectors (with a view to relieving them of additional functions, such as mediation and conciliation), classification of breaches of labour law according to their gravity, determination of appropriate sanctions, the obligation to notify to the labour inspectorate cases of occupational accidents and diseases, and the need to ensure the enforcement of legal provisions. The Committee would be grateful if the Government would also provide a copy of any relevant texts or documents.*

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

### Antigua and Barbuda

#### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)**

*Articles 3(2) and 16 of the Convention. Functions of the labour inspectors and frequency of inspection visits.* The Committee recalls that, according to the job description that had been provided by the Government in 2008, it would have been possible to entrust labour inspectors with duties which might not be part of the primary functions set out in *Article 3(1)(a)–(c)*. It moreover recalls that, from 1997 to 2009, there was a high fluctuation in the number of labour inspections conducted (1997: 362; 1998: 75; 1999: 332; 2000: 75; 2001: 127; 2002: 81; 2003: 53). Consequently, the Committee asked the Government to provide information in relation to additional functions that might be entrusted to them, and on statistics on labour inspection visits. In its report, the Government refers to the functions of the Inspection Unit as provided by Labour Code Act No. 14 of 1975, and which are in conformity with the Convention, and indicates the number of inspections conducted in 2009 (248) and 2010 (128). In this context, the Committee also takes note of the information provided in a communication addressed to the Labour Commissioner's Office of 9 July 2012, which had been shared with the ILO, to the effect that job descriptions for all public service positions were being updated within the Public Sector Transformation Strategy.

*The Committee would be grateful if the Government could provide the Office with an updated job description for labour inspectors, once completed. It also invites the Government to revisit the job description for labour inspectors within this Transformation Strategy, with regard to the comments which were already brought forward by the Committee.*

***It also asks the Government to explain the continuing high fluctuation in inspection numbers, with inspection visits having almost halved in 2010 compared to 2009.***

***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 with ***regret*** that, despite long-standing comments, and previous commitments expressed by the Government, the Government is silent on the subject of collaboration with the Ministry of Health in particular, as it only refers to the comments made in its previous report. ***The Committee is therefore bound to again repeat its request for detailed information on the difficulties which prevent the adoption of practical measures to develop cooperation between the labour inspectorate and the Ministry of Health (such as on regular exchange of information and data, common training seminars or conferences), and asks the Government again to provide details on the content and modalities of any existing cooperation.***

***It reminds the Government that it may avail itself of ILO assistance in this area if it so wishes.***

As far as collaboration with the social partners is concerned, the Government repeats information previously brought forward indicating that collaboration exists between the labour inspectors and social partners, and that all violations are reported to the labour inspection units and followed up accordingly. ***Noting the limited amount of information provided on this matter, the Committee is bound to repeat its previous request, encouraging the Government to seek for collaboration between the labour inspectorate and social partners, and to keep the ILO informed of the results achieved. Moreover, it requests the Government again to indicate whether the labour inspectorate is associated in the work of the National Labour Board.***

***Articles 6, 7 and 10. Number, status and qualifications of labour inspectors.*** The Committee recalls that the labour inspectorate comprises “non-established” and “established” labour inspectors, with all of them performing labour inspection functions, but with only one person being specialized in occupational safety and health. It also observed that labour inspectors were remunerated according to the scale of the department in which they were placed and that there were no requirements as to the qualification and the level of competence required, notably as far as “non-established” labour inspectors were concerned. Consequently, recalling the obligations set out in ***Articles 6, 7 and 10***, the Committee requested the Government to take measures to staff the labour inspectorate with a sufficient number of labour inspectors, who are suitably qualified, to ensure a status which grants them stability of employment and adequate wages, and to specify the remuneration scale applicable to labour inspectors.

In this context, the Committee notes the Government’s reply indicating that it is in the process of merging the two existing systems in the public service, and that it is envisaged to recruit labour inspectors on the basis of the qualifications and level of competence required for such positions. It also notes from the communication from the Director of Public Sector Transformation of 9 July 2012, addressed to the Labour Commissioner’s Office, that it is intended, within the public sector reform that was approved by the Cabinet of Antigua and Barbuda in 2010, to complete a payroll audit in order to identify discrepancies between staffing levels and monies paid out in salaries, and to update job descriptions. Moreover, the Committee notes from this communication that the Civil Service Act had been redrafted and is currently being prepared by the Parliamentary Counsel for presentation to the September sitting of the Parliament.

***The Committee requests the Government to provide information on the outcome of the civil service reform. It asks the Government to keep the Office informed of any progress made in this regard, and to elaborate in particular the way in which the points raised by the Committee are being addressed by the civil service law reform.***

***It asks the Government to submit the amended civil service legislation, once adopted by the Parliament, and information on the possible new salary scales applicable to labour inspectors by comparison to the remuneration of public officers with similar functions such as tax inspectors.***

***Noting that the Government has not replied to its previous comments, the Committee once again requests it to provide details on the training programmes provided to labour inspectors (subjects, duration, attendance, evaluation and impact) and to communicate copies of any relevant documents.***

***Articles 17–21. Number of penalties imposed and warnings issued. Submission of a consolidated annual inspection report.*** The Committee observes that the Government abstains from providing information on the number of warnings issued and prosecutions launched as previously requested. It recalls that, in accordance with ***Articles 20 and 21*** of the Convention, the central authority should publish an annual general report on the work of the inspection services containing information and statistics on the subjects enumerated in ***Article 21(a)–(g)***, including on penalties imposed. With reference to its general observation of 2010 the Committee recalls that when well prepared, the annual reports offer an indispensable basis for the evaluation of the results in practice of the activities of the labour inspection service and, subsequently, the determination of the means necessary to improve their effectiveness. In this regard it notes with ***interest*** that the Government, with the help of the Office, is in the process of implementing a Labour Market Information System to ensure that data are available for annual reports to be completed within the prescribed deadlines (***Article 20***).

***The Committee requests the Government to keep the Office informed of any progress made in this regard. It moreover asks the Government once again to provide detailed information on the number of warnings issued by labour inspectors and the number of prosecutions initiated, as well as on their outcome in practice.***



## Argentina

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)**

The Committee notes the Government's report received on 30 October 2012, and the attached documentation. It also notes the successive comments made by the Confederation of Workers of Argentina (CTA), received on 31 August 2012, and 7 September 2012, and the comments of the General Confederation of Labour (CGT), 10 September 2012 and received 21 September 2012. ***The Committee requests the Government to provide any information or comments that it deems useful in this regard.***

*Articles 3(1)(a), 4, 10 and 11 of the Convention. Supervision and control of the labour inspection services by a central authority, and number of staff of the labour inspection services.* The Committee previously requested the Government to indicate the manner in which effect is given to *Article 4* of the Convention with respect to the structure and operation in practice of the labour inspection system, and especially the measures adopted to ensure coordination between the federal inspection authorities and the labour inspection authorities in the various provinces.

The CTA reiterates that uniform criteria have not been established throughout the country for labour inspection as a basis for effective supervision. The system of cooperation between the provinces and the Federal State, in addition to the scarcity of the human and material resources allocated to provincial offices, means that the inspection system is deficient, and that this deficiency is demonstrated by the high levels of informality. It emphasizes that entrusting the provinces with exclusive competence for the inspection of general conditions of work and occupational safety and health regulations has led to the undermining of the systems set up by the provinces, because of the shortage of human and material resources allocated to these offices. The number of inspectors is very inadequate in certain provinces where precarious forms of work and informality are very high. For this reason, greater resources should have been allocated to these provinces. The CTA considers that the absence of effective public policies for labour inspection is related to the pressure that can be exerted by local economic powers and major national and multinational enterprises subject to the jurisdiction of the provinces, and the importance of these enterprises in the local economy and employment structure is such that it discourages the intensification of inspection by the local authorities and allows the introduction of self-inspection. The trade union emphasizes that the failure to discharge the inspection function effectively has many negative consequences in relation to the promotion of decent work, for three basic reasons: the high level of unregistered or "black" work; the high incidence of employment accidents; and the low quality of employment and its increasingly precarious forms, which affect a significant number of workers. The CTA also refers to section 30 of Act No. 25.877 of 2004 on the labour system, creating the Integrated Labour and Social Security Inspection System (SIDITYSS), which provides that the Ministry of Labour, Employment and Social Security (MTEYSS), in its capacity as the central authority may, following the intervention of the Federal Labour Council (CFT), discharge the corresponding functions when a local labour inspection service is not in compliance with the requirements of international Conventions or of the Act.

The Government indicates once again that the CFT promotes general inspection policies based on the principles of coordination, cooperation, co-participation and co-responsibility with a view to achieving greater effectiveness in the various jurisdictions. In this respect, it refers to the agreement concluded by the MTEYSS and the CFT, in which the latter undertakes to collaborate with the MTEYSS for the implementation of the National Plan to Regularize Labour (PNRT), and the agreements concluded by the MTEYSS and the provincial authorities for the same purpose.

With regard to the number of labour inspectors, the Government indicates that there are currently 472 labour inspectors in the MTEYSS, in addition to the number of inspectors in each province and those of the Government of the autonomous city of Buenos Aires. The Government adds that it is taking measures to unfreeze 510 posts in the permanent staff of the Ministry, which will subsequently be subject to a competition to fill posts, among others, of labour and social security inspectors, specialist labour and social security inspectors and professional labour and social security inspection analysts.

The Committee recalls, as it noted in paragraph 140 of its General Survey of 2006 on labour inspection, that the objective of a central authority is to facilitate the establishment of a single policy throughout the territory covered and to make it possible to use the available resources in a rational way, and that flexibility in the nature of the system in federal States must not be regarded as derogating from the principle of having a single authority, provided that the constituent units of the federal State have budgetary resources that are sufficient to discharge the functions of the labour inspectorate within their respective fields of competence. ***The Committee would be grateful if the Government would provide information in its next report on the measures adopted, including in the context of section 30 of Act No. 25.877 of 2004, with a view to giving effect to the Convention in terms of the need for a labour inspection system placed under the supervision and control of a central authority and based on common principles respecting its organization, methods of action and the distribution and management of human and financial resources.***

***The Committee also once again requests the Government to provide information on the geographical distribution and current number of the inspectors who are in post at federal level and in each of the provinces, in relation to the number and location of workplaces liable to inspection and the number of workers employed therein.***

***Finally, the Committee once again requests the Government to provide information on the proportion of the national budget devoted to labour inspection and its distribution between the central and provincial structures, as well***

**as information on the material resources available to them, including means of transport for the professional travel of inspectors.**

*Articles 3(1)(a), 16, 18 and 24. Supervisory function of labour inspectors, frequency and scope of inspections, and penalties.* The Committee previously requested the Government to provide information on the frequency and scope of the inspections undertaken, including in cases where one single establishment is concerned, and on the impact of the Integrated Employment Promotion Plan: “More and better work” and the “National plan for the regularization of work” (PNRT).

The Committee welcomes the Government’s indication that the PNRT is designed to achieve the incorporation into the social security system of workers excluded following decades of increasing labour flexibility and the lack of the State’s involvement in inspection functions, which led to forms of precarious employment such as pseudo-cooperatives, enterprises for the provision of services and subcontracting arrangements, leaving certain sectors and activities in a situation of extreme vulnerability. It adds that the number of workers who are currently in a registered and legal job with legal protection is the highest for the past 36 years. Informality has been combated through measures to promote a decrease in informal work and an increase in quality jobs with social protection. These have included placing the issue on the public agenda, the simplification of procedures to regularize workers, the reinstatement of and increase in personnel, and the use of technology in inspection activities. The supervisory activities carried out over the past seven years, through the PNRT, are unprecedented; between September 2003 and July 2011, a total of 910,922 workplaces were inspected and the situations of 2,888,024 workers were examined. These inspection activities have undoubtedly contributed to the fall in the rate of unregistered employment. In the second half of 2003, 49.6 per cent of the total number of workers were not registered. This percentage fell to 36 per cent in 2010 (according to the Permanent Household Survey). Through inspection, as well as information, repression and penalties, the MTEYSS has endeavoured to identify violations of the requirement for employers to declare and to pay contributions to the social security system throughout the national territory. The measures have included: the strengthening of the authority of regional heads and delegates throughout the national territory; awareness raising for all officials; training; the purchase of vehicles; the improvement of the premises of regional delegations and directorates; the development of a computerized support application; and the planning of activities. Contributions were also made by the inspections carried out by the Federal Public Income Administration (AFIP) and the provincial labour administrations, through the CFT.

The Committee also notes that the amounts of the fines established in the event of the engagement of workers in a dependent relationship without the required registration and declaration in the context of the PNRT have been updated and increased as from 1 September 2012, in accordance with Decision No. 327/2012 of 8 August 2012 of the National Social Security Administration (ANSES).

***The Committee notes this progress with interest and requests the Government to provide information on the frequency and scope of the inspections undertaken in a single workplace, including by provincial delegations. It would also be grateful if the Government would indicate the proportion of labour inspections devoted to combating undeclared work in relation to the proportion of inspections carried out with a view to enforcing the legal provisions relating to conditions of work and the protection of workers (such as the payment of wages, and occupational safety and health conditions), including in relation to unregistered workers, and the penalties imposed (with an indication of the respective legal provision).***

*Article 6. Stability of employment and conditions of service of labour inspectors.* In its previous comments, the Committee requested the Government to provide a copy of Decision No. 670/10 of the Ministry of Labour, Employment and Social Security, as well as information on the measures adopted to ensure that labour inspectors benefit from working conditions in accordance with the principles of stability and independence laid down by this provision of the Convention. The Committee notes that this Decision contained the job descriptions for the posts of labour and social security inspectors and territorial planning analysts. ***The Committee requests the Government to provide information on the measures adopted to guarantee labour inspectors, including those working at the provincial level, a legal status and conditions of service which ensure their stability of employment and independence from changes of government and improper external influences.***

*Article 7(3). In-service training for labour inspectors.* With reference to its previous comments, the Committee notes the information provided by the Government to the effect that the level of studies of the inspectors and controllers recruited under the Framework Act to regulate national public employment (Act No. 25.164 of 1999) ranges from basic education (2 per cent) to postgraduate studies (13 per cent), including primary (7 per cent), secondary (53 per cent) and university (25 per cent) education. ***The Committee would be grateful if the Government would provide information on the measures adopted to ensure that labour inspectors working in the provinces receive adequate training that is adapted to new technologies and the conditions of work and workplaces liable to inspection, under the terms of the Convention, both when entering service and during employment.***

*Article 9. Collaboration of technical experts and specialists in certain inspection activities falling within the remit of labour inspectors.* The Committee notes that the Government has not provided information in reply to its previous comment on this Article. ***The Committee therefore once again requests the Government to describe the arrangements through which the labour inspection services in the various provinces benefit from the collaboration of technical experts and specialists and the cooperation of the Occupational Risks Supervisory Authority (SRT).***

*Articles 20 and 21. Annual inspection report.* The CGT alleges that the Government is not in compliance with these Articles of the Convention. The Committee notes that the last annual inspection report received by the Office dates from 2000. The Committee reminds the Government of its obligation to ensure that an annual report on the work of the labour inspection services is published and transmitted to the ILO in the form and within the time limits envisaged in *Article 20*, and that this report contains the information required on each of the items indicated in *Article 21*. **The Committee hopes that measures will be adopted rapidly to give full effect to these provisions of the Convention and that information, such as the number of workplaces liable to inspection (including at the provincial level) and the number of workers employed therein, as well as statistics of occupational diseases and of industrial accidents, will in future be included in the annual report, so as to ensure that it is a useful tool to evaluate and improve the operation of the labour inspection system.**

Furthermore, noting that the Government has not replied to a number of previous comments, the Committee requests it to provide the requested information on:

*Cooperation in the context of MERCOSUR.* The Committee notes that according to the Government's report, the joint inspection operations in the context of MERCOSUR have continued and have been well received among the social partners in the region. **Observing that the trade unions in Argentina asked for the inclusion of controls in relation to occupational safety and health and the work environment in the context of the MERCOSUR Regional Labour Inspection Plan (PRIM) and that the proposal was well received by the representatives of other countries, the Committee requests the Government to continue to supply information on the joint activities carried out in the framework of this plan and especially on their impact on the national labour inspection system. The Committee also requests the Government to supply information on any progress made in the formulation and implementation of the training plan for labour inspectors in the context of the PRIM.**

*Article 5. Cooperation between the inspection services and other institutions and collaboration with employers and workers.* The Committee also notes that the SRT has been signing agreements with the provinces and with the autonomous city of Buenos Aires, with a view to conducting joint inspections and providing economic resources for the reinforcement of local labour inspection. The SRT has also signed agreements with the trade unions, with a view to providing economic resources for the training of union leaders and workers, and to developing projects and actions aimed at improving working conditions and the working environment. **The Committee requests the Government to supply detailed information on the inspections carried out jointly by the SRT and the autonomous city of Buenos Aires and by the latter and the provincial delegations pursuant to the abovementioned agreements, and also on the impact of such collaboration with regard to the objective pursued by these agreements. It also requests the Government to provide information on any projects launched in the context of collaboration between the SRT and the trade unions, and on the results thereof.**

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1985)**

The Committee refers to its comments under the Labour Inspection Convention, 1947 (No. 81), in so far as they are concerned with the application of the present Convention.

The Committee notes the Government's report, received by the Office on 30 October 2011 and the successive observations from the Confederation of Workers of Argentina (CTA), dated 31 August 2012 and 7 September 2012, and the observations from the General Confederation of Labour (CGT), dated 10 September 2012.

The CTA declares that the lack of adequate inspection services has a direct impact on the quality of employment and the effective enjoyment of labour rights and that evidence of the laxity of inspection policies is visible in the high accident rates in the sector. According to the aforementioned confederation, the rural sector has a high rate of non-declared or "black" employment, and although it varies from one area to another, it reached a figure of 80 per cent in 2012, according to information from the Ministry of Labour itself. The CTA claims that this situation reflects the Government's lack of interest in taking action against non-declared employment and shows that the shortcomings in the inspection services are deliberately created. The confederation adds that employers in the sector do not notify occupational accidents and send most workers who have suffered accidents to a welfare organization belonging to the branch trade union to prevent these accidents being included in official statistics and thus avoid any inspection by the authorities and the risk insurers. The CTA denounces with concern the slavery-like conditions of work experienced by *taraferos* (workers engaged in artisanal harvesting of yerba maté) in the Province of Misiones, whose employment situation is extremely precarious and includes non-registered work, deplorable working conditions and safety and health conditions, failure to pay the remuneration prescribed by law, payment in the form of vouchers which workers must use in an agricultural cooperative at an exchange rate considerably lower than their face value. This situation has given rise to several days of protest between 2010 and 2012, including road closures and hunger strikes. After denouncing the slave labour camps detected at an undertaking in Caraguatay and on maté plantations in Guatambú, the Union of Maté Harvesters and Temporary and Unemployed Workers in the Province of Misiones has repeatedly requested the presence of the Ministry of Labour with a view to putting an end to the irregularities that exist in the sector, but no inspections have been carried out. **The Committee requests the Government to send information or comments in response to the observations from the CTA and CGT.**

*Legislation.* The Committee notes the adoption of Act No. 26.727 of 21 December 2011 establishing regulations for employment in agriculture. It notes that, under section 99 of the Act, the authority responsible for enforcement is the Ministry of Labour, Employment and Social Security. The Committee notes the Government's statement that, in relation to the Act, regulations regarding labour inspection in the sector are currently in the process of being adopted. **The Committee requests the Government to keep the Office informed of any developments in the adoption of implementing**

**regulations relating to the abovementioned Act and to send a copy of any legislative text adopted in this regard. The Committee also requests the Government to send information with its next report, supported by statistics, on the impact of the application of the new Act on the objective of the Convention.**

Furthermore, observing that the Government has not replied to its previous comments, the Committee is bound to repeat its previous observation, which read as follows:

The Committee notes the Government's report received at the Office on 23 November 2010. It also notes the comments made by the General Confederation of Labour (CGT) in a communication dated 29 October 2010.

The Committee observes that the CGT, in the comments made in relation to the application of various Conventions ratified by Argentina, includes a copy of a communication from the Argentine Union of Rural Workers and Dockworkers (UATRE) addressed to the Ministry of Labour, Employment and Social Security (MTEYSS) (Ministry of Labour), which contains observations with regard to the Government's compliance with the present Convention.

As regards the issues related to the present Convention, the Committee refers the Government to its observation concerning the Labour Inspection Convention, 1947 (No. 81), and raises the following points specifically relating to labour inspection in agriculture.

*Lack of information on the functioning of the labour inspection services in agriculture.* The UATRE states that it asked the Ministry of Labour to improve rural inspection activities by allocating adequate human resources, but no progress has been observed in this area at national level. The trade union also states that the establishment of the National Register of Rural Workers and Employers (RENATRE), aimed at monitoring the payment of employers' contributions to the integrated unemployment benefit system, has resulted in the registration of 800,000 workers.

The Committee notes that the Government does not supply the detailed information requested of it in a previous observation concerning the manner in which all provisions of the Convention are given effect in practice. **The Committee hopes that the Government will send information in its next report on: (a) the number of labour inspectors exercising their functions in agriculture (disaggregated by provincial authority, if possible) (Article 14 of the Convention); (b) the material means (offices, transport facilities) at the disposal of each provincial authority (Article 15) to ensure that labour inspectors can perform their duties, in accordance with Article 6(1)(a) and (b); (c) the specific training given to labour inspectors to ensure the effective discharge of their functions related to prevention and control as provided for in Article 9(3) (including frequency, number of participants, subjects covered and duration, and preferably with a breakdown of the training activities organized for inspectors in the various regional offices); and (d) the manner in which collaboration is ensured between technical experts and the labour inspection services, especially in the provincial offices, in accordance with Article 11.**

*Articles 6(1)(a) and 24. Enforcement function of the labour inspectorate; adequate and effectively enforced penalties.* The Committee observes that, according to information published on the website of the MTEYSS (<http://www.trabajo.gov.ar>) concerning labour inspection activities in 2010 and 2011, it appears that inspections have been restricted, at least during the aforementioned years, to checking the labour register. The Committee also notes, from the documentation attached to the report on Convention No. 81, the various agreements signed between the MTEYSS and the trade unions for combating undeclared work and ensuring effective inspection of conditions of work and child labour, in the context of the "Integrated employment promotion plan: more and better work" and the "National plan for the regularization of work" (PNRT). **The Committee requests the Government to continue to provide information on the enforcement activities of the labour inspection in agriculture, including with regard to child labour, and to send statistics relating to violations of the labour legislation found, stating the legal provisions concerned and the penalties imposed, and copies of court decisions relating to the latter.**

*Articles 17 and 19. Preventive control and notification of occupational accidents and cases of occupational disease.* In reply to the Committee's previous comments in this respect, the Government indicates that the provincial authorities conduct on-the-spot routine inspections or inspections resulting from complaints using qualified staff when occupational accidents or diseases have been brought to their attention. The Committee observes that, according to statistics placed on the website of the Supervisory Authority for Occupational Risks (SRT), there was a substantial increase between 2008 and 2009 in accidents in the workplace in provinces such as Tucumán, a major global producer of lemons, and Jujuy, which, according to the same data, accounts for 65 per cent of the workforce in agriculture.

**The Committee requests the Government to indicate the measures taken or envisaged to ensure that labour inspectors are associated with the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety (Article 17) and to send a copy of any relevant legal text. It also requests the Government to indicate the manner in which effect is given to Article 19 of the Convention, concerning the notification to the labour inspectorate of occupational accidents and cases of occupational disease (paragraph 1), or the association of the labour inspection services in agriculture with any inquiry into the causes of the most serious accidents or diseases that have affected a number of workers or had fatal consequences (paragraph 2).**

*Articles 26 and 27. Obligation to publish and send an annual report.* The Government indicates that the statistics relating to occupational accidents and diseases compiled by the SRT can be consulted on <http://www.srt.gov.ar/data/fdata.htm>. The Committee observes that the statistics contained in the different reports that appear on the SRT website do not appear to distinguish between occupational accidents and cases of occupational disease.

**The Committee refers the Government to its comments under Articles 20 and 21 of Convention No. 81 and requests the Government to keep the ILO informed of progress made in ensuring that the central labour inspection authority publishes and sends to the ILO, in accordance with Article 26 of the Convention, an annual report on the work of the labour inspection services in agriculture, either as a separate report or as part of its general annual report, containing the information required in Article 27(a)–(g). The Committee also reminds the Government that it may avail itself of the technical assistance of the Office in this regard.**

## Armenia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)**

The Committee notes the comments by the Republican Union of Employers of Armenia (RUEA) and the Confederation of Trade Unions of Armenia (CTUA), forwarded with the Government reports dated 28 October 2011 and 4 October 2012. The employers' comments are discussed below in relation to *Articles 16 and 18 of the Convention*.

*Legislation.* The Committee notes with *regret* that the documents requested in previous comments have still not been submitted to the ILO, thus preventing it from carrying out a first assessment of the application of the Convention. *The Committee requests the Government to provide the following texts as soon as possible:*

- *The Administrative Infractions Code of 6 December 1985.*
- *The Act of 17 May 2000 on the Organization and Conduct of Inspections, as amended on 23 June 2011.*
- *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. 1698-N of 2 December 2010 repealing 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. 115-N of 17 September 2009 on the reform of the labour inspection system.*
- *Government Decision No. 876-N of 16 June 2006 establishing the form, use and procedure for issuing a copy of a workbook.*
- *Government Decision No. 1882-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.*
- *Any further law which might have been adopted within the Labour Inspection Reform, and which applies the provision of the Convention.*

*Article 5(b) of the Convention.* *Collaboration between labour inspectorate officials and employers and workers or their organizations.* Further to its previous comments which were based on an observation of the CTUA, the Committee notes with *interest* the information provided by the Government according to which labour inspectors have regular working meetings with social partners, and participate in seminars organized by the CTUA and sectoral branches of trade unions. According to the Government, 210 seminars were held in 2010, in which 5,200 representatives of employers and workers took part, and 303 seminars were organized in 2011, attended by 6,891 employers' and workers' representatives. Five advisory seminars on Armenian labour legislation were organized under the auspices of the labour inspectorate, the CTUA and branch trade unions. It also notes that, in accordance with section 9 of the Law on State Labour Inspection, labour inspectors are bound to provide information to employers, trade unions and employees on methods of application of labour legislation. In this regard, it notes that in 2011, 115 employers submitted written requests for advice regarding the application of the labour legislation. The Government adds that since 2010, the inspectorate has been operating an electronic system for the reception and examination of requests for assistance and advice, as well as complaints. In 2010 and 2011, 96 and 194 requests/complaints were submitted, respectively. *The Committee would be grateful if the Government would provide information as to the frequency of working meetings held with social partners, and the subjects covered by such meetings and their outcome. It further asks the Government to indicate whether other methods of collaboration with social partners exist and draws the Government's attention to the guidelines provided in this regard in Part II of Recommendation No. 81 concerning labour inspection. It also requests the Government to provide information on the number of the complaints lodged and the type of matters raised via the electronic enquiry system, and the possible follow-up by the labour inspectorate.*

*Articles 3, 12, 13, 16, 17 and 18.* *Effective exercise of labour inspection functions through inspection visits and measures to prevent their obstruction.* In its previous comments the Committee noted that 137 inspection visits had not materialized and requested clarifications in this regard. The Government indicates that, due to the continuing labour inspection reforms, the planned inspections were temporarily suspended. The Republican Union of Employers of Armenia adds that these visits were suspended as a follow-up to studies carried out by the Government which had found that inspections were too frequent, uncoordinated and often irrelevant. There are three inspection bodies, the State Labour Inspectorate, the State Hygiene and Anti-Epidemic Inspectorate and the National Centre for Technical Safety whose competencies overlap. The level of information exchange between these bodies remains very limited and the inspection's mandate, competence and its purpose are often not clear, thus impacting adversely on the investment climate and the country's competitiveness. Consequently, the Government approved a reform of the inspection system under Decision

No. 1135-N of 17 September 2009. According to the information provided by the Republican Union of Employers of Armenia that all inspectorates should have a system of risk-based inspections with joint databases, and that inspections should be simple, transparent and foreseeable. Consequently the Law of 17 May 2000 on the Organization and Conduct of Inspections was amended on 23 June 2011, in order to reflect these new requirements. In this regard, the Committee notes the Government's indication that as a result of this amendment undertakings have been classified as high, middle and low-risk groups, and that the number of possible inspection visits might have been limited as a result of this classification. According to the Government, it is stipulated that an inspection visit in a high-risk undertaking may not be conducted more than once a year, every three years for a medium-risk undertaking and in a low-risk undertaking not more than every five years. It also notes that further limits to labour inspection visits appear to apply through ordinances or instructions issued by the head of the "respective state body".

The Committee recalls that under *Article 3* of the Convention, the labour inspection functions exercised through inspection visits serve not only an enforcement but also an advisory and preventive purpose. Indeed, as indicated in paragraph 85 of the Committee's 2006 General Survey on labour inspection, the two functions of enforcement and advice are inextricable. The Committee also recalls that according to paragraphs 105–107 of the 2006 General Survey, the powers that labour inspectors have under *Article 13* of the Convention, including powers of injunction with immediate effect, serve an exclusively preventive purpose as they are aimed at eliminating or at least reducing occupational risks and hazards which constitute a danger to the health or safety of the workers, irrespective of the existence of a violation of legal provisions. If hazards have arisen as a result of non-compliance with legal provisions, then *Articles 17* and *18* of the Convention apply so that persons responsible for such violations are held accountable. The Committee is of the view that limiting the number of inspection visits to a specific number for a certain time period raises obstacles to the effective performance of labour inspection functions, including the important preventive functions entrusted upon labour inspectors by *Article 13*. Moreover, it goes against the principle of unannounced visits, which is reflected in *Article 12* of the Convention, and is intended to ensure that inspectors may carry out inspections at any time, without previous notice both for preventive purposes and as a useful means to address attempts to conceal labour violations (paragraphs 261–263 of the 2006 General Survey).

***The Committee would be grateful if the Government would communicate Decision No. 1155-N of 17 September 2009 on the reform of the labour inspection system and explain the impact of this reform on the structure, coordination, working methods and priorities of the labour inspectorate. In this context, the Committee refers to the labour inspection audit that was conducted in 2009 within the ILO project "Enhancing Labour Inspection Effectiveness" and requests the Government to detail whether the labour inspection reform took into account the findings and outcomes of the audit. It would also be grateful to receive a copy of the government study mentioned by the Republican Union of Employers of Armenia on the reform of the labour inspection system.***

***The Committee also requests the Government to communicate a copy of the amendments of 2011 to the law of 17 May 2000 on the organization and conduct of inspections and indicate whether the labour inspectorate still has the possibility to carry out unannounced visits or visits outside the schedule applicable to a workplace's risk classification for enforcement or preventative purposes, and whether labour inspectors have the power to issue injunctions with immediate effect in case of imminent danger to the health or safety of the workers. It also requests the Government to communicate any ordinances and instructions issued in relation to labour inspection activities and to indicate the nature of the bodies issuing such instructions within the labour inspection system.***

The Committee notes that, according to the Republican Union of Employers of Armenia, the number of inspections was halved compared to the previous year, but revealed undeclared work cases were doubled. In this regard, it notes that according to the Government, during 2009–11, almost 2,650 cases of undeclared work were disclosed. ***Please also specify the measures ordered by the labour inspectorate when cases of undeclared work are discovered and the impact of these measures on the principal objective of the labour inspectorate under the Convention, which is the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work.***

***Articles 19, 20 and 21. Annual reports on the work of the labour inspectorate.*** The Committee notes that, once again, a consolidated annual report for the period under review, that contains the type of data and statistics set out in *Article 21* of the Convention, was not submitted to the Office. It also notes the indications made by the Government that an annual inspection report for 2010 has been discussed with the social partners in the Republican Tripartite Commission, and that the annual inspection report for 2011 will be discussed at the upcoming session of this Commission. The Committee takes note of the comments of the Republican Union of Employers of Armenia, highlighting the delayed publication of the annual inspection report and the fact that up to the present, the annual inspection report for 2011 has not been discussed in the Tripartite Commission. With reference to its general observation of 2010 the Committee recalls that when well prepared, the annual reports offer an indispensable basis for the evaluation of the results in practice of the activities of the labour inspection service and, subsequently, the determination of the means necessary to improve their effectiveness. ***The Committee once again urges the Government to take all necessary measures for the elaboration and publication by the central labour inspection authority of an annual report containing all the information required under Article 21 of the Convention and to keep the Office informed of any progress made in this regard. The Committee also invites the Government to provide its views in relation to the comments of the Republican Union of***

***Employers of Armenia as regards the delay in both the publication of annual inspection reports, and their submission to the Republican Tripartite Commission.***

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 Government in its report received on 7 September 2012 by the Office in reply to the communications of the Australian Council of Trade Unions (ACTU), dated 31 August and 25 October 2010. The Committee further notes the latest communication by the ACTU, dated 31 August 2012, concerning the application of the Convention in law and in practice, transmitted to the Government on 14 September 2012.

*Article 3(1) and (2) of the Convention. Functions of the system of labour inspection. Contracting and precarious work.* The Committee notes the concerns raised by the ACTU regarding the extent of “sham contracting”, and the growth in precarious forms of work, in Australian workplaces. According to the ACTU, just under 40 per cent of all workers in Australia are in “non-standard” work arrangements, including casual, short-term, contracting and labour hire arrangements. The ACTU refers to a recent independent inquiry commissioned by them to examine the extent of insecure work and its impact. The inquiry recommended that the Federal Government increase the resources allocated to the Fair Work Ombudsman (FWO) to improve enforcement and compliance, with a focus on developing new approaches to protect insecure workers.

*Investigation into workers and trade unions.* The ACTU raises further concerns over the extent to which the FWO expends its time, effort and resources investigating whether workers and trade unions have breached workplace laws, and most notably whether they have taken industrial action contrary to the restrictive provisions regulating this activity in the Fair Work Act 2009 (the FW Act). The ACTU indicates that this activity risks distracting the FWO from its core and critical task of assisting vulnerable workers in enforcing their rights.

*Building and construction industry.* The Committee takes note of the response provided by the Government with regard to its previous comment and the 2010 communications by the ACTU. The Committee notes in particular that the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Act 2012 has been adopted, and that it abolishes the Office of the Australian Building and Construction Commissioner (ABCC), and replaces it with the Fair Work Building Industry Inspectorate, known as Fair Work Building and Construction (FWBC). The FWBC and the Fair Work (Building Industry) Act 2012 commenced operations on 1 June 2012. The Government indicates that the long-standing practice of referring wages and entitlements claims, including the underpayment of employees, to the FWO has been terminated, with the aim of turning the ABCC, and now the FWBC, into a full service regulator. The FWBC retains, however, the power to compulsorily obtain information and/or documents. The Government indicates that the retention of these powers is balanced by the introduction of significant new safeguards, including a sunset provision three years after they come into effect. The Committee notes that the ACTU, in its 2012 communication, again raises concerns in relation to these coercive powers for use in the investigation of industrial issues. The ACTU alleges that early indications show that the investigation and prosecution of workers and their organizations remain a key aspect of the FWBC’s work. The ACTU believes this continued focus on enforcing laws against workers and trade unions is inconsistent with the primary duties of inspectors as specified in *Article 3* of the Convention.

***The Committee invites the Government to respond to the concerns raised by the ACTU, and in particular concerning measures taken to address the increase in the use of “sham contracting” and precarious work, and regarding the use of the FWO’s time and resources to investigate workers and their organizations, including in the building and construction industry.***

*Article 4. Labour inspection under the supervision and control of a central authority.* In response to the concerns raised by the ACTU in 2010, the Government indicates that it considers an independent body to oversee labour inspection in the building and construction industry would give best effect to the Wilcox report’s recommendation that the FWBC have “operational autonomy”, and that it is both appropriate and necessary to retain industry-specific regulation within a separate body while genuine cultural reform continues in the building and construction industry. The Committee notes that the ACTU’s most recent communication again raises concerns in relation to the creation of this second federal labour inspectorate, in particular given that the model adopted by the Government was specifically rejected by the Wilcox inquiry. The ACTU alleges that separate inspectorates inevitably lead to differing standards applying to workers within different sectors. ***The Committee invites the Government to respond to the concerns raised by the ACTU in relation to the risks associated with having separate inspectorates.***

*Article 5(b). Collaboration between officials of the labour inspectorate and employers and workers or their organizations.* The Committee takes note of the response by the Government to its previous comment and the communication by the ACTU dated 31 August 2010, concerning collaboration between the FWO and employers’ and workers’ organizations. The Government indicates that an example of such collaboration was the AU\$2.5 million Shared Industry Assistance Project (SIAP), designed to help specific industries transition to Modern Awards. In partnership with 15 employer and employee organizations, the FWO developed resources, including interpretive guides and tables,

industry-specific helplines, fact sheets and handbooks. The Committee notes that the ACTU has again remarked on how the operation of the restrictions in the FW Act in relation to the right of access by unions to workplaces for compliance purposes is significantly limiting the capacity of unions to perform their monitoring and compliance activities. While the ACTU welcomes the introduction of new laws in 2012, which amend the current right of entry provisions to address sweatshop conditions for outworkers in the textile, clothing and footwear industry, it calls on the Government to amend the FW Act so as to permit agreements to improve on the statutory right of entry, and to ensure trade unions can enter premises where their members have been employed. ***The Committee invites the Government to respond to the concerns raised by the ACTU in relation to right of access by unions to workplaces for compliance purposes, and to continue to provide information on the collaboration between officials of the labour inspectorate and employers and workers or their organizations.***

*Article 18. Adequate penalties.* The Committee notes the most recent communication by the ACTU, which indicates high levels of non-compliance of workplace instruments by employers, especially in smaller enterprises. In this regard, the ACTU calls on the Government to consider increasing fines for underpayment or non-compliance so as to increase deterrence. ***The Committee asks the Government to respond to the comments by the ACTU concerning the adequacy of penalties for non-compliance of workplace instruments by employers.***

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 comments by the Federal Chamber of Labour (BAK) in its communication of 29 May 2012.

*Articles 1, 2(2), 4, 7(3), 10 and 16 of the Convention. Impact of restructuring on the organization, structure and resources of the Labour Inspectorate.* The Committee takes note of the Government's indication that the labour transport inspectorate has been incorporated into the Labour Inspectorate with effect from 1 July 2012 and that the Labour Inspection Act was amended so as not to exclude workplaces in the transport sector from its scope of application.

The Committee also notes the Government's reply to the BAK's previous comments on the limited number of labour inspectors in relation to their tasks. The Government acknowledges that personnel reduction measures have been taken in all federal agencies but adds that the competent ministry has undertaken to maintain the number of labour inspectors at a level which correlates with the complexity of functions to be performed, and that as from the end of 2013, a further reduction in personnel has been excluded. The Government furthermore indicates that six public servants with technical background have been transferred to the Labour Inspectorate even though the ratio of workers per labour inspectors in the country continues to be below recommended standards.

In this regard, the Committee notes the comments made by the BAK according to which the human resources situation is strained, despite the transfer of public servants from other services who had not yet been trained for their specific duties. The BAK expresses reservations in respect of a possible loss of expertise and knowledge in technically complex areas, such as railways, following the impact of the merger between the labour transport inspectorate and the Labour Inspectorate, which, even though agreed upon, would henceforth merit close follow-up.

***The Committee would be grateful if the Government could keep the Office informed of the impact of the merger of the former labour transport inspectorate with the Labour Inspectorate in relation to the number of workplaces brought under the control of the latter, the complexity of the tasks entrusted on labour inspectors, the number of staff, the number of visits and the effectiveness of controls in technically complex areas such as railways, and to furnish an updated organizational chart of the labour inspection system. The Committee would also be grateful if the Government would provide information on the training made available to labour inspectors and its impact on the effective performance of their duties.***

*Articles 5(a) and 21(e). Effective cooperation between labour inspectors and other governmental bodies.*

1. *Common use of databases.* The Committee notes from the Government's report that the legal prerequisites for the operation of a database on construction sites have been fulfilled in order to facilitate legal reporting and notification obligations from the side of the employer (such as advance notification of construction sites, construction operations, notification of hazardous construction works and asbestos works). This information can, once captured in the database, be accessed by the Labour Inspectorate, the tax administration and health insurance providers. ***The Committee would be grateful if the Government could keep the Office informed of the impact of this type of data exchange on the daily work of the Labour Inspectorate.***

2. *Effective cooperation between labour inspectorates and judicial bodies.* The Committee notes from the Government's report that the Federal Ministry of Justice is about to draw up an order making the criminal courts aware of section 402 of the Code on Penal Procedure, according to which the criminal court has to formally notify a final court sentence to an interested body, if this sentence pronounces the loss of a right or would cause the loss of a right. The Government explains in this respect, that this provision applies for instance vis-à-vis bodies competent for issuing business licences and withdrawing them in the event of a criminal conviction. The Committee also notes that the BAK



reiterates its concerns that the Labour Inspectorate is not systematically informed of the outcome of relevant criminal court procedures. In this context, the Committee recalls previous comments made by the Government, to the effect that data protection rules prevented the notification of criminal court rulings to the labour inspectorate in a general manner, except from those cases in which apprentices were concerned and in which the labour inspectorate was called upon to take part in criminal proceedings as a witness. The Government further indicated that the Labour Inspectorate has, in specific cases, such as industrial accidents, the right to apply for access to the criminal file or to receive a copy of the final court ruling. ***The Committee asks the Government to clarify the impact of section 402 of the Code of Criminal Procedure on administrative practice in relation to the direct notification of criminal court rulings to labour inspectorates, so that the outcome of such procedures can be captured in the annual inspection report as required by Article 21(e) of the Convention.***

*Cross-border collaboration with other labour inspectorates within the EU in the framework of the EU Directive 2006/123/EC on services in the internal market.* The Committee notes with *interest* the new section 20, paragraph 9, of the Labour Inspection Act which sets the legal ground for a systematic collaboration between labour inspectorates from different EU countries. Under this section, labour law violations are to be notified to the Labour Inspectorate of the country, which hosts the head office of the employer who infringed the law in Austria. The Austrian Labour Inspectorate is obliged to provide information on employers' labour law compliance upon request from labour inspectorates located in other EU countries. It also notes in this regard the BAK's concerns, stating that these possibilities of inter-administrative collaboration appear not to be used in case of violations of provisions relating to the 2011 Act on wages dumping.

***The Committee would be grateful if the Government could provide information on the impact of the new section 20(9) of the Labour Inspection Act on the enforcement of legal provisions pertaining to conditions of work and the protection of workers in practice. It also requests the Government to make any comment it deems appropriate on the BAK's observations concerning the enforcement of the Act on wages dumping in a cross-border context, and to provide statistics on cross-border cooperation, including on violations notified in this regard.***

*Article 18. Adequate penalties and deterrence of sanctions.* In its previous comments the Committee asked for examples of administrative fines which were tax-deductible by the employer pursuant to section 19 of the Act on the penal liability of legal entities (VbVG). In this regard, the Committee notes the clarification provided by the Government, that fines could only be tax-deductible as business expenditure when they could not be attributed to the person penalized or when they were imposed for a minor fault. According to the Government, such cases of tax deductibility did not relate to violations of worker protection provisions. In this context, the Committee notes that the tax legislation has been modified in that fines that were previously paid by a corporation for the termination of prosecution under the Code of Criminal Procedure, or which were imposed under the VbVG, cease to be tax-deductible. This information is confirmed by the BAK, which expresses its satisfaction with regard to this development.

The Committee notes moreover with *interest* that, according to the new section 20, paragraph 10, of the Labour Inspection Act, the Labour Inspectorate may notify violations of worker protection rules to bodies that grant financial aid out of a federal budget to employers found to be non-compliant. ***The Committee would be grateful if the Government could provide information on the application of this legal provision and indicate the follow-up given to notifications of violations, as well as on its impact on compliance with legal provisions pertaining to conditions of work and the protection of workers.***

## Bahrain

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1981)***

The Committee notes the Government's report, the 2011 annual report of the labour inspectorate and the 2010 annual report of the Labour Market Regulatory Authority (LMRA).

*Articles 1, 2 and 4 of the Convention. Labour inspection system.* The Committee notes that, according to information provided by the Government, Act No. 36 enacting the Labour Act in the private sector was adopted on 26 July 2012, and that the Minister of Labour will soon draft the implementing decisions, including those concerning the labour inspectorate, as provided for under section 173(1) of the new Act. The Committee also notes that, according to the Government, the new Labour Act places greater emphasis on the labour inspectorate as a result of the reorganization of the Division for Safety in the Workplace; it is now incumbent upon the Ministry to monitor employers and prompt them to apply the provisions of the new Labour Act.

The Committee notes that although the new Act seems to restrict the labour inspectorate's competence to matters of safety and health, but that, on the other hand, it contains provisions accompanied by penalties for matters outside the area of safety and health, such as the employment of women and young people, wages, working hours and leave, labour regulation (register of workers), occupational accidents and cases of occupational disease, and the settlement of individual and collective disputes. ***The Committee requests the Government to specify the field of competence of the labour inspectorate and to send the Office a copy of the implementing decisions of the Labour Act concerning the labour inspectorate, as provided for under section 173(1) of the Act in question. It also asks it to send an organizational chart as well as any document and relevant report on the reorganization of the labour inspectorate and its functions.***

*Articles 3(1) and (2), 20 and 21. Transfer of competence for the enforcement of the legislation on the employment of foreigners and content of the annual report on labour inspection activities.* With reference to its previous comments, the Committee notes the Government's indication that competence for the enforcement of the legal provisions relating to the employment of foreign workers has been transferred to the LMRA. The Committee encouraged this transfer as it believed it would have the effect of refocusing inspection activities on working conditions and the protection of both national and foreign workers while engaged in their work. However, it would seem from the information provided in the annual inspection report, especially the statistical data contained therein, that the labour inspectorate's functions still include the enforcement of the legal provisions relating to the employment of foreign workers, in particular the registration of notices that foreign workers have fled, in cooperation with the authorities responsible for monitoring the nationality, passports and residence of workers, and that these activities still result in the arrest of workers. The Committee also notes in the annual report of the LMRA that the main task of this body is to monitor the employment of foreign workers, but that it also looks into their working conditions as it verifies the payment of their wages electronically. The Committee therefore notes that there is no clear distinction between the functions of the labour inspectorate and the LMRA, as both have duties linked to working conditions and the application of immigration law.

In its 2006 General Survey on labour inspection, the Committee recalled, in paragraph 78, that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. Given that a large proportion of inspection activities are spent on verifying the legality of the immigration status, the Committee stressed the need to ensure that additional duties, which are not aimed at securing enforcement of the legal provisions relating to conditions of work and the protection of workers, are assigned to labour inspectors only in so far as they do not interfere with their primary duties and do not in any way undermine the authority and impartiality which are necessary to inspectors in their relations with employers and workers. The Committee also pointed out that the partnership between the labour inspectorate and other bodies such as the internal and border police is not conducive to a climate of confidence, which is a prerequisite for good cooperation between the employers, workers and the labour inspectors. It must be possible for labour inspectors to be respected for their authority to report offences, and at the same time to be approachable as preventers and advisers.

The Committee therefore stressed that the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour protection. This objective can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and the protection of workers.

In this respect, the Committee notes that the labour inspectorate's annual report merely provides statistical data on the number of inspection visits, the enterprises that were visited, the complaints lodged by the workers and records of proceedings, etc., but it does not contain any information on inspection activities relating to working conditions such as working hours, leave, wages, and the work of women, young persons and children.

***The Committee requests the Government to provide information on the measures taken to separate the activities concerning foreign workers' employment, which is a matter for the Labour Market Regulatory Authority (LMRA) and immigration authorities, from those relating to conditions of work and the protection of workers that constitute the main functions of the labour inspectorate under Article 3(1) of the Convention. The Committee hopes that the Government will take all necessary measures so that labour inspectors are no longer involved in workplace controls aimed at arresting, imprisoning and repatriating workers in an irregular situation from the standpoint of immigration law and that they effectively secure the enforcement of the legal provisions relating to conditions of work and the protection of workers (Articles 2 and 3(1) of the Convention).***

***Furthermore, the Committee asks the Government to specify how the labour inspectorate monitors the way in which employers fulfil their obligations (such as the payment of wages and other benefits due for work effectively carried out) towards foreign workers, including those who are in an irregular situation, and in particular when these workers are subject to a deportation or expulsion order.***

***Referring to its general observation of 2010, the Committee would be grateful if the Government would ensure that future annual reports of the labour inspection authority contain information on the nature of the legal provisions relating to the conditions of work on which the authority has focused (wages, hours of work, holiday, weekly rest, the employment of children and the disabled, etc.), as well as on the protection of workers while engaged in their work (non-discrimination, social security, representation of workers, etc.), without consideration of the legal situation of workers employed in the workplaces inspected.***

*Articles 6, 10 and 11. The number of labour inspectors and the material means and logistics necessary for them to perform their inspection duties effectively.* The Committee notes in the annual labour inspection report that the conditions of service of labour inspectors are inferior to those of inspectors working in the LMRA, and there are too few of them to cover the number of workplaces liable to inspection and to carry out the tasks with which they are entrusted. It also points out that: the statistical data and electronic files specific to the labour inspectorate are lacking; the material means and logistics are inadequate, especially with respect to suitable offices for work and portable computers to facilitate the preparation of reports; and there is a need to improve the capacity of the inspectors and cover their expenses when they use their private cars. The Committee notes that, under section 173(2) of the new Labour Act, the Ministry is bound to provide the occupational safety and health inspection authority with everything it requires to fulfil its functions, including equipment and measuring devices. ***The Committee requests the Government to indicate the measures taken to improve***

*the conditions of service and increase the staffing of the labour inspectorate and to place at its disposal the necessary material means and logistics to be able to carry out its duties effectively and efficiently, including service vehicles to carry out inspection visits or, failing this, to reimburse the travelling expenses.*

*Article 7(3). Strengthening the capacities of the labour inspection services.* The Committee notes that, according to section 173(3) of the new Labour Act, the Ministry of Labour must organize specialized sessions and training programmes to improve the competencies and performance of labour inspectors and ensure that they have the required qualifications in the area of occupational safety and health. In its report, the Government voices its interest in strengthening the capacities of the labour inspectorate and refers to training activities and visits in the field organized in cooperation with the ILO. The Committee nevertheless notes that the number of participants in these training sessions is somewhat limited (two to four persons). *The Committee requests the Government to send the Office details on the impact this training has had on the efficiency of the labour inspectorate and to provide information on the measures taken to improve the training of labour inspectors.*

*Article 14. Notification of industrial accidents and cases of occupational disease.* In its previous comments, the Committee noted that under Order No. 1 of 2006, industrial accidents and cases of occupational disease must be notified by the employer not only to the Social Insurance Fund and the competent police station, in accordance with Act No. 24-76 on social insurance, but also to the Ministry of Labour. *The Committee requests the Government to indicate whether the labour inspectorate receives this information and whether it is dealt with by the central inspection authority with a view to developing a policy on prevention focusing on high-risk occupations (construction, the chemical industry, the energy sector, work involving the operation of heavy machinery, activities involving overexposure to the sun, etc.). The Committee also asks the Government once again to provide details on the notification procedure for industrial accidents and cases of occupational disease and on the action taken in response to such notifications in practice. It requests it once again to provide a copy of any relevant legal text or document.*

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

## Belgium

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1957)**

The Committee notes the comments of the Confederation of Christian Trade Unions (CSC) of 29 August 2012, which were forwarded by the Office to the Government on 18 September 2012. It also notes the Government's consolidated report received by the Office on 15 October 2012.

*Articles 3(1)(a), 2, 5 and 16 of the Convention. Extension of the legislative areas covered by the inspection services.* The Committee recalls the previous indications in the Government's reports, noted in its previous comments, that action against illegal work, including social fraud, social dumping and unfair competition among businesses, particularly in the context of abusive transboundary posting under Directive 96/71/EC on the posting of workers, is a particular focus of the legislative authorities. This has led, on one hand, as described in previous comments, to the establishment of specific coordinating and consultative structures dedicated to action against this phenomenon, such as the Social Research and Information Department (SIRS), in addition to shared databases and electronic notification systems. On the other hand, significant legislative initiatives have been taken, such as the adoption of the Social Penal Code in 2010, which regroups and repeals many previous Acts, such as the Act on labour inspection and the Act of 30 June 1971 concerning administrative fines, in order to establish the legal framework for a strategic and coordinated approach. The Code provides in section 2 that a strategic plan and an operational plan, setting out the action to be taken, IT projects to be developed and methods of implementation, shall be drawn up each year.

The various labour inspection services were assigned new tasks, and the Committee was therefore interested in the impact of these new structures on legal enforcement, the follow-up action by labour inspection services and the development of strategies in that area, while having due regard to the discharge of the primary functions of labour inspectorates.

The Committee notes the statistics provided by the labour inspectorate on the legislative framework to be implemented and the statistics on the infringements recorded and the action taken. It also notes the 2012 action plan, submitted in reply to its request. It notes that the plan provides for actions to be taken to combat social fraud by various inspection systems, including the social legislation inspection unit (CLS) of the Federal Public Service for Employment, Labour and Social Dialogue. It notes from the plan that 40 per cent of CLS activities are devoted to combating social fraud and 60 per cent to its core functions (compliance with individual and collective working conditions and remuneration, working time, hours of rest, including rest on Sundays and public holidays, organization of industrial relations), and that the CLS comprises 200 social controllers, supervised by 35 inspectors in its 24 divisions in the country. The Committee notes that, in this strategic framework, social legislation inspection will target social fraud more in the form of social dumping and transboundary fraud, which is in violation of Directive 96/71/EC on the posting of workers, as well as the phenomena of false self-employment and employment for umbrella companies. This is confirmed by the information provided by the CLS in reply to the questions raised by the Committee, according to which inspection of foreign enterprises is organized in collaboration with inspection services from other countries.

***The Committee would be grateful if the Government would continue providing information on the activities undertaken by the CLS, including in the SIRS district units, and to indicate the form of social fraud addressed and the activities undertaken in light of the broad definition in the Social Penal Code which defines social fraud and illegal work as any violation of social and labour legislation that falls within the scope of the federal authority (section 1 of the Social Penal Code).***

*Measures taken with regard to workers in an irregular situation, but whose situation does not amount to trafficking in persons or evident exploitation.* The Government indicates that the inspection services – in the framework of their coordinated operation in the district units – endeavours not only to identify infringements regarding undeclared or irregular work, but also to enforce legal provisions and regulations concerning working conditions in terms of their health and safety.

The Committee recalls that neither Convention No. 81 nor Convention 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. Foreign workers in an irregular situation are often doubly penalized in that, in addition to losing their jobs, they face the threat of expulsion, if not actual expulsion. The function of verifying the legality of employment should therefore have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of inspection (General Survey on labour inspection, 2006, paragraphs 77–78).

***The Committee once again requests the Government to provide further information regarding the measures taken to ensure that workers in an irregular situation benefit from the same protection in respect of their working conditions as workers with a regular status, without fear of expulsion pursuant to the immigration laws, and therefore of a deterioration of their situation as a result of labour inspection. In this regard, the Committee requests the Government to provide information on infringements detected and action taken including penalties imposed that further the protection of workers in an irregular situation.***

*Articles 10, 14 and 16. Inspection of workplaces as often and as thoroughly as is necessary.* 1. *Staff available in the federal inspection service for welfare at work of the Federal Public Service for Employment, Labour and Social Dialogue.* The Committee notes the CSC's comments alleging a severe lack of staff in the only inspection service responsible for the enforcement of occupational safety and health legislation. According to the CSC, the staff available in this service is insufficient to inspect a significant proportion of employers, which has often been emphasized in the official reports of this inspection service. According to the figures in the service's 2009 report, the number of inspection visits carried out per inspector is in practice 320 a year, while each inspector would need to inspect 2,800 enterprises. One out of three employers is inspected several times a year and consequently the 320 visits carried out cover fewer employers. Given the number of employers (268,078 according to the National Social Security Office), each employer will theoretically be inspected once every 20 years. The union also indicates that this shortage has continued for many years and that, due to ineffective inspection, in 20 to 50 per cent of cases, important safety and health provisions are not given effect. The official annual report states that the Belgian system for prevention cannot result in a significant improvement in compliance with regulations and that the inspectorate is facing, in a considerable number of enterprises, a level of bad faith which it does not currently have the means to address. The union adds that, despite its various actions, the situation deteriorated further in 2010, as staff numbers fell by 13 from the 2009 figures, and only 12,606 employers were inspected. Its conclusions on the efficiency of the inspection services regarding occupational safety and health are confirmed by a study carried out under the auspices of the Committee of Senior Labour Inspectors (SLIC) of the European Commission, which had also underlined the severe staff shortage in Belgian labour inspection compared with the situation in the rest of Europe.

The Committee notes from the 2010 annual report of the federal service for supervision of welfare at work, which is available on its website, the indication that the number of enterprises liable to inspection seems to be very high compared with other EU Member countries, despite new recruitment. The total number of staff declined by 13 per cent in 2010 (249) compared with 2004 (269). According to the report, the 249 staff include 187 labour inspectors. The Committee notes that in 2010 1,668 inspections were carried out in the context of accident investigations and 1,597 following a complaint; there were, in comparison, 7,036 routine inspections. It also notes the indication in the annual report of the inspection service that, due to the limited capacity of the inspectorate, the selection criteria for opening cases following employment accidents are restricted to those resulting in temporary incapacity for work of at least 15 days and/or permanent incapacity of at least 5 per cent. In other regions, further restrictions are applied due to a critical lack of inspectors. In this context, the Committee also notes the indication of the CSC with reference to the 2002 annual report that significant employment accidents often occur in workplaces where the same failure to comply with regulations had already caused minor accidents and adequate preventive measures had not been taken. This situation applies primarily to enterprises in categories C and D, where there is no prevention adviser. ***The Committee invites the Government to indicate the measures taken to alleviate the staff shortage reported by the CSC and by the SLIC and the inspection service itself. It would be grateful if the Government would indicate the measures taken to ensure that industrial accidents regularly give rise to an investigation and to provide statistics on industrial accidents, as required by Article 21(f) of the Convention.***

***The Committee requests the Government to indicate the measures taken, both in terms of prevention and of sanctions, to improve compliance with occupational safety and health legislation.***

2. The Committee notes in the social inspection report the development of data mining, a new tool to improve detection of social fraud through the more effective targeting of inspections, which appears to be used by the social inspectorate and by the CLS. This tool functions by analysing indicators for fraud by an employer, for example, a sharp rise or drop in turnover, the sudden mass recruitment or dismissal of workers, etc. The tool also enables the detection of a wide variety of infringements, such as undeclared worksites or workers, breaches in respect of temporary unemployment, illegal subcontracting and wages paid “under the table”. According to the report, infringements were discovered in two-thirds of enterprises in the construction sector.

***The Committee requests the Government to provide information on data mining and to indicate how this tool facilitates the planning and coordination of labour inspection and the extent to which it could ease the workload of the CLS so that it can concentrate more on the inspection of working conditions in the strict sense of the term.***

*Articles 5(a), 17 and 18. Legal action and penalties. Decriminalization of penalties in the Social Penal Code.* The Committee notes the CSC’s comments that the violations reported by the labour inspectorate rarely lead to effective sanctions, which is often explained by the failure of the courts to take action, which means that action is not taken against offenders, as well as by a slow and ineffective system of administrative fines. In particular, the reporting of violations is time consuming and only leads to a result after a long period. Of the 55,986 reports by the inspectorate in 2010, 51 per cent noted infringements. Reports of violations were drawn up for 931 of the most serious infringements, but only 241 cases resulted in a sanction or an out-of-court settlement, that is 26 per cent of cases. Between 2005 and 2010, this figure rose to 30 per cent.

Furthermore, the Committee notes with *interest* the Government’s information on the GINAA and *e-PV* (electronic reports of violations) IT projects. The Government specifies that, since 2010 the electronic *pro justitias* have been in operation in the Federal Public Service for Employment, Labour and Social Dialogue. This means that a report can now only be drawn up in an electronic online version, in a standardized format. The Committee notes from the report of the social legislation inspectorate that the *e-PV* should guarantee a better quality of reports of violations, owing to faster processing, and the more efficient exchange and classification of information. The electronic reports are electronically signed by their authors and are centralized in a data bank, facilitating the elaboration of internal and external statistics. The Government specifies that GINAA is the centralized database of the administrative fines service and the *e-PV* system incorporates GINAA data. ***The Committee invites the Government to indicate the impact of the electronic reports on the efficiency of labour inspection activities including on the enforcement of adequate penalties for violations of the legal provisions.***

The Government adds that the Social Penal Code introduces the possibility of using an administrative fine instead of a penal sanction, thereby “decriminalizing” a part of penal social law. According to the Government, it is preferable to resort to administrative fines or a civil sanction rather than to lengthy judicial proceedings, which seems to concur with the concerns raised by the CSC.

***In this regard, the Committee once again encourages the Government to continue providing information on the impact of this reform on the level of application and compliance with legal provisions on working conditions and the protection of workers. It invites the Government to provide information on the number and type of offences reported, as well as the measures ordered and the penalties (administrative and penal) handed down and the cases referred by labour inspectors in the field of working conditions and the protection of workers (including wages, hours of work and occupational safety and health etc.).***

***The Committee would be grateful if the Government would indicate the measures taken to ensure a better follow-up by labour inspectors of cases referred to the criminal courts and draws attention, in this context, to its general observation of 2007 on effective cooperation between the labour inspection and the justice system.***

*Articles 20 and 21. Consolidated annual report on labour inspection activities.* The Committee notes that the various inspection services publish a report on their respective websites but that, in all cases, some of the information required under Article 21(e), (f) and (g) is missing, such as statistics of the violations committed and penalties imposed, industrial accidents and occupational diseases. ***The Committee encourages the Government to take the necessary measures to ensure that the annual inspection reports include the information provided for under Article 21(e), (f) and (g) and are published in such a way that they give an overview of the functioning of the labour inspection system.***

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1997)**

The Committee refers to its comments on the Labour Inspection Convention, 1947 (No. 81), in so far as they are concerned with the application of the present Convention.

*Article 6(1)(a) and (3) of the Convention. Enforcement of the legal provisions relating to conditions of work and control of illegal employment.* The Committee notes from the statistics that there has been a reduction in the number of labour inspection staff, decreasing from 299 in 2010 (32 inspectors and 267 labour controllers) to 272 in 2012 (31 inspectors and 241 labour controllers). It also notes that the number of inspection visits carried out in agriculture and horticulture decreased from 1,629 in 2008–10 to 1,330 in 2010–12. The Committee notes that most inspection visits carried out are in the context of action against undeclared work, with 1,223 out of a total of 1,629 visits in 2008–10 and

930 out of a total of 1,330 visits in 2010–12. *The Committee requests the Government to indicate the measures taken or contemplated to ensure that there are sufficient labour inspectors to undertake inspections with the necessary frequency to ensure the effective discharge of their duties. With reference to its previous comments, the Committee again requests the Government to provide information on the impact of enforcement activities targeting violations in the area of undeclared work on the inspection workload and the scope and effectiveness of the enforcement of legal provisions relating to conditions of work and the protection of workers, including undocumented workers. In particular, the Committee would be grateful if the Government would indicate the manner in which the labour inspectorate ensures the discharge of employers' obligations (such as the payment of wages and other benefits owed) with regard to undocumented workers in an employment relationship, in cases where such workers are subject to being taken back to the frontier or to expulsion pursuant to the immigration laws.*

*Articles 26 and 27. Publication of information on labour inspection in agriculture. While noting the information provided by the Government in its report on labour inspection activities and their results, the Committee again requests the Government to take the necessary steps to ensure the publication – as a separate report or as a separate section of the general report of the labour inspectorate – of an annual report on the work of the inspection services in agriculture, containing the information required by Article 27(a)–(g).*

## Plurinational State of Bolivia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)**

*Recommendations made under the FORSAT–ILO multilateral technical cooperation project.* In its previous comments the Committee noted that the most noteworthy contributions of this project (which lasted until April 2007) as far as labour inspection was concerned, were the proposals relating to: the updating of the Labour Inspection Regulations; the separation of labour inspection functions from those of conciliation and mediation; reports on inspection work; periodical inspection summaries; inspection records and inspection orders; work stoppage orders; notification of violations and proposed penalties; and an analysis of the situation regarding penalties. The project also included proposals for improving the Ministry of Labour's business register, the exchange of information and cooperation between institutions. The Committee expressed the hope that the Government would be in a position to report measures implemented to define a legal and structural framework, as well as working methods and procedures with a view to developing an effective inspection system. However, it notes the Government's statement that since the end of the project, there has been no progress in this regard. *The Committee requests the Government to indicate the measures taken to follow-up the recommendations made in the context of the abovementioned project, and to provide information on any measures taken or envisaged to define a legal and structural framework and determine working methods and procedures with a view to developing an effective inspection service.*

*Articles 19, 20 and 21 of the Convention. Periodical reports and publication and communication of an annual report on the work of the inspection services.* In its previous comments the Committee noted that the regional and departmental authorities have to prepare monthly reports that are submitted to the General Directorate of Labour and Occupational Health and Safety, but that, up to the present, no annual report had been published because data collection and registration are done manually, making it difficult to process the information in a timely manner. The Committee notes with *interest* that in the context of the "Bolhispania" cooperation agreement to improve the inspection system, concluded by the Spanish International Cooperation for Development Agency (AECID) and the Ministry of Labour, Employment and Social Welfare, the latter's departmental offices were provided with several computers, printers and other electronic equipment in 2009. The Committee hopes that the Government will dedicate this equipment for the use in recording and processing the data needed to prepare the annual inspection report. *It requests the Government to provide information on any progress made in the publication and communication to the ILO of an annual report on the work of the inspection services within the time limits and in the form prescribed by Articles 20 and 21 of the Convention and, in particular, on the results of the formalities undertaken to obtain technical assistance from the Office with a view to implementing and designing an electronic system for labour inspection activities, in accordance with the wish expressed by the Government.*

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1977)**

The Committee refers the Government to the comments it is making under the Labour Inspection Convention, 1947 (No. 81), in so far as they are also concerned with the application of the present Convention.

*Articles 6(1) and (2), 12(1) and 24 of the Convention. Cooperation among institutions to ensure the physical safety of labour inspectors in the performance of their duties in the agricultural sector and enforcement of penalties for obstructing inspectors in the performance of their duties.* The Committee notes the Government's statement that inspection visits in remote rural regions (such as El Chaco) encountered problems when certain employers blocked them with a show of weapons. The Committee notes that, under section 7(3) of Resolution No. 346 of 28 November 1987, approving the labour inspection regulations, the labour inspectorate may request cooperation from the law enforcement

authorities in the performance of its duties. It also emphasizes that, under *Article 24* of the Convention, adequate penalties shall be provided for by national laws and enforced not only for violations of legal provisions enforceable by labour inspectors, but also for obstructing labour inspectors in the performance of their duties. ***The Committee requests the Government to provide information on the measures taken with a view to strengthening the authority necessary to labour inspectors in agriculture in their relations with employers and workers in the sector. It also requests the Government to indicate the measures taken by law enforcement authorities to protect inspectors during their visits to certain agricultural undertakings where their physical safety is not guaranteed, and to provide information on the investigations opened and action taken against the authors of such acts, including measures taken in accordance with Article 24 of the Convention.***

*Articles 6(1), 15 and 21. Lack of adequate logistical resources and transport facilities to meet the needs of labour inspectors in agriculture.* The Government makes reference to difficulties in carrying out inspection visits in agricultural undertakings owing to the lack of suitable vehicles and logistical resources, especially in the El Chaco and Amazon regions. The Committee recalls that, under *Article 15* of the Convention, the competent authority shall make the necessary arrangements to make available to labour inspectors in agriculture local inspection offices suitably equipped in accordance with the requirements of the service, accessible to the persons concerned, in so far as possible, and located so as to take account of the geographical situation of the agricultural undertakings, and of the means of communication (*paragraph 1(a)*) and the transport necessary for the performance of their duties in cases where suitable transport facilities do not exist (*paragraph 1(b)*). The Committee emphasizes the crucial importance of providing labour inspectors with suitable transport facilities, since their mobility is essential for the fulfilment of their duties, particularly in agricultural undertakings, which are by nature located far from urban areas and are often spread over an area without public transport. ***The Committee therefore requests the Government to take the necessary measures to evaluate these needs and to submit them to the financial authorities with a view to giving effect to the requirements of the Convention. The Committee requests the Government to provide information in its next report on any measures taken in this connection and on the results obtained.***

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

## Bulgaria

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)***

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

*Articles 3(2) and 16 of the Convention. Additional functions entrusted to labour inspectors.* The Committee notes that the number of inspections carried out in 2009 was according to the Government more than double the inspections carried out the previous year and the number of violations found was 26 per cent higher, as a result of the increase in the number of inspections. The Government attributes this increase to significant improvements in the organization, preparation, execution and reporting of the inspections as well as the reduction of the duration of a single inspection. The Government also reports that the labour inspectorate has at its disposal facilities in 30 locations and 143 motor vehicles of which 38 are off-road vehicles. Each labour inspector has an average workload of 588 enterprises and 7,250 "insured persons" and is provided with a notebook, mobile internet and mobile phone with limited calls covered by the budget of the General Labour Inspectorate Executive Agency (GLIEA).

The Committee notes from the Annual Report of the GLIEA that in 2009, emphasis was placed on ensuring wage payment in the context of the economic crisis and that consequently, delayed payments of wages and other remuneration were settled in the order of 39 million Bulgarian levs (BGN).

The Committee also notes however from the Government's report that the control on the compliance with the provisions of the Employment Promotion Act was also aimed at the lawful employment of foreigners. According to the 2009 activity report of the GLIEA, this control appears to take place on certain occasions with the involvement of representatives of the Ministry of the Interior following alerts that foreign citizens perform work without a permit. The Committee also notes that article 7(2) and (3) of the Labour Inspection Act sets out certain conditions under which joint investigations can be carried out with other agencies.

***The Committee would be grateful if the Government would provide details on the nature and scope of the activities carried out by the labour inspectorate in the area of controlling undeclared work and in particular the employment of irregular foreign workers, including information on the detected violations and the legal provisions concerned as well as the legal proceedings initiated, remedies applied and sanctions imposed. It requests the Government to specify the impact of the activities of the labour inspectorate focused on undeclared work in relation to the enforcement of provisions on conditions of work and the protection of workers, including undeclared workers.***

***In particular, the Committee would be grateful if the Government would indicate the manner in which the labour inspectorate ensures the enforcement of the employers' obligations with regard to the rights of foreign workers in an irregular situation, such as the payment of wages and social security benefits for the period of their effective employment relationship, especially in cases where such workers are liable to expulsion from the country; and asks the Government to provide information on the number of cases where workers found to be in an irregular situation have been granted their due rights.***

***The Committee also requests the Government to describe the method and nature of the joint investigations carried out by the labour inspectorate with other agencies including the Ministry of the Interior.***

***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 the report sent by the Trade Union Confederation of Burundi (COSYBU) dated 30 August 2012 concerning the insufficient material means provided to labour inspectors in order to promote Occupational Safety and Health (OSH) in the workplace. *The Committee requests the Government to provide the relevant information in this respect.*

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:

*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 (PRODIAF) 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 received at the ILO on 1 September 2012. It also notes the observations made by the General Union of Workers of Cameroon (UGTC) in a communication of 29 October 2012, received at the ILO on 12 November 2012. *The Committee asks the Government to send any comments it deems appropriate on these observations.*

The Committee also notes with *interest* that in May 2011, the Government sought and received technical assistance from the ILO to carry out an assessment of the labour administration and labour inspection services. It notes that the recommendations made in the assessment, which was completed in May 2011, to a large extent reflect the Committee's previous comments on the application of the Convention. *The Committee requests the Government to indicate the measures taken or envisaged, if necessary with financial assistance to be sought in the context of international cooperation, to gradually put in place a labour inspection system that meets the requirements of the Convention, in the light of the recommendations made in the abovementioned assessment.*

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

## Cape Verde

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)**

*Legislation.* The Committee notes that new regulations for the labour inspectorate-general, which give effect to certain provisions of the Convention, were adopted by Legislative Decree No. 13/2012 of 26 January 2012.

*Article 14 of the Convention. Notification to the labour inspectorate of cases of occupational disease.* The Committee notes with *satisfaction* that section 17(1) of the new regulations of the labour inspectorate-general establishes the obligation to notify the competent regional delegation for labour inspection of fatal cases of occupational disease. This notification, as for fatal industrial accidents, must be made by the employer within 24 hours. It also notes that, according to section 18 of the same regulations, the employer is obliged to gather, collate and communicate to the labour inspectorate-general within ten days after the end of the relevant three-month period, quarterly data concerning diagnosed cases of occupational disease, and also industrial accidents which result in incapacity for work of more than one day. These data must be accompanied by an indication of the date and location of the accident or of the origin of the disease, its



cause, the nature and extent of the injury, and the number of days of incapacity. *The Committee requests the Government to send any legislative text adopted pursuant to the provisions of the abovementioned section 17, and also statistics of industrial accidents and cases of occupational disease communicated to the various regional labour inspection branches during the period covered by the Government's next report, pursuant to the legislation in force.*

*Article 15. Scope of the obligation of professional secrecy.* The Committee notes with *satisfaction* that section 34(1) of the new regulations of the labour inspectorate-general extends the obligation of professional secrecy that applies to labour inspectors beyond the end of their activity. *The Committee requests the Government to indicate what would be the consequences for labour inspectors of non-compliance with the obligation of secrecy and also the obligation of confidentiality and the prohibition on personal interests prescribed by sections 34 and 35, respectively, of the new regulations, and to send copies, if applicable, of any relevant legislative texts.*

*Articles 20 and 21. Publication and communication of an annual report.* The Government indicates in its report that, in view of the inadequacy of human resources and material means for the collection and processing of statistical information, the labour administration is still not in a position to collect and process statistical data. However, the Committee notes the internal annual report for 2011, copies of which have been made available to the social partners and the Office. This report contains information on the number of inspectors per branch; the number of inspections undertaken by the various inspection branches and by sector of activity; the number of compliance orders issued and the number of prosecutions initiated by branch office; the type of infringements reported; the number of requests for action submitted and the infringements to which they relate; the number of procedures initiated per infringement; the number of procedures concluded; the number of procedures referred to the court, the number of procedures archived, and the number of procedures per infringement in progress; and the number of industrial accidents and the percentage of accidents per sector of activity. The Committee invites the Government to refer to the guidance given in Part IV of Recommendation No. 81 concerning the manner in which the information required by *Article 21* may be presented in the annual report to serve as a basis for evaluating the operation of the labour inspectorate and the level of application of the legislation under its supervision, and also the adoption of the necessary measures for its improvement. It also reminds the Government of the possibility of availing itself of technical assistance from the ILO in order to establish the necessary conditions for the preparation of an annual report, its publication and the communication thereof to the ILO, in accordance with *Article 20*, and the inclusion of the information required by *Article 21* in such a report. *The Committee requests the Government to provide in its next report information on the formal steps it might have taken in this respect.*

## 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:

The Committee notes the adoption of Act No. 09-004 of 29 January 2009 establishing the Labour Code chapter II of which concerns labour inspection and gives effect to many provisions of the Convention.

*Articles 3(2), 10, 11 and 16 of the Convention. Duties of labour inspectors and human and budgetary resources of the labour inspection service.* The Committee notes that, according to the Government's report, the application of the Convention poses a problem in so far as the resources which should be available to labour inspectors for the performance of their duties are mostly lacking. Notwithstanding section 319(2) of the Labour Code, under the terms of which labour inspection services must have premises that are suited to their needs, the Government states that no significant measures have actually been adopted to this end. In particular, some offices lack even the most essential items, namely, doors, lights, chairs and tables, and are inaccessible when it rains because of flooding. Furthermore, according to the Government's report, no transport facilities have been established for inspectors since the ratification of the Convention and, apart from the transport expenses which they cover in the course of their duties, labour inspectors themselves pay the costs of communications, reprographics, printing, etc., necessary for the performance of their duties. The Government also states that out of the 53 inspectors, only 18 are assigned to enforcement duties. Some inspectors and controllers who were recruited in 2010 and 2011 are engaged in internships within the technical departments.

The Committee notes with *concern* the description that the Government has made of the situation faced by the labour inspection services, both from the point of view of human resources and material means. The Committee notes that the Government has not provided the information requested on any steps taken to obtain the technical assistance of the Office and to seek resources through international financial cooperation to improve on this situation.

*The Committee urges once again the Government to avail itself of ILO technical assistance, including in order to obtain support in its search for the necessary funds in the framework of international cooperation, with a view to the progressive establishment of a labour inspection system which meets the requirements of the Convention. It requests the Government to provide information on any formal step taken to this end.*

*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 with *regret* 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

### Hong Kong Special Administrative Region

#### **Labour Inspection Convention, 1947 (No. 81) (notification: 1997)**

*Articles 3(1) and (2) and 17 of the Convention. Additional functions entrusted to labour inspectors. The Committee notes with **interest** from the Government's report that 26 posts of labour inspectors were created in 2011 to strengthen enforcement of labour legislation on conditions of employment. It also notes from the annual report of the Labour Department for 2010 the priority placed on preventive and enforcement action to ensure timely wage payment. The Committee notes however with **concern**, from the Government's report, that labour inspectors continue to be involved in joint operations which, by granting the police and immigration authorities access to workplaces, allow the latter to arrest workers on the grounds of their "illegal" residence situation.*

The Government indicates that the number of joint operations has been relatively small compared to the total number of workplace inspections (217 and 193 joint operations compared to 140,267 and 138,395 inspections in 2010 and 2011, respectively), and that the role of labour inspectors in this framework is to collect intelligence and evidence on suspected "illegal" employment activities for the ultimate purpose of protecting the rights and benefits of workers and securing convictions against unscrupulous employers. According to the Government's report, as a result of stringent enforcement actions, the Labour Department secured a total of 4,397 convictions under different provisions of the Employment Ordinance, Chapter 57, in 2010 and 2011.

The Committee recalls once again, with reference to its previous comments, that 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 and 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 respected for their authority to report offences, and at the same time to be approachable as preventers and advisers. *The Committee therefore once again urges the Government to take the necessary measures as soon as possible to dissociate the functions of enforcing immigration law from those of controlling the observance of workers' rights by ensuring that labour inspectors are no longer involved in joint operations which, by granting the police and immigration authorities access to workplaces, allows the latter to arrest undocumented workers on the grounds of their irregular residence situation.*

With reference to paragraph 78 of the 2006 General Survey on labour inspection, the Committee reminds the Government that, to be compatible with the protective function of labour inspection, the verification of the legality of employment by labour inspectors should have as its corollary the reinstatement of the statutory rights of all workers, including undocumented ones. This objective can only be met if the workers covered are convinced that the primary task for the labour inspectorate is to enforce the legal provisions relating to conditions of work and the protection of workers. ***The Committee requests the Government to indicate the manner in which the labour inspectorate ensures the discharge of employers' obligations (notably payment of wages and other benefits owed for work done during the period of the effective employment relationship) with regard to undocumented workers in an irregular situation from the point of view of residence status, including in cases where such workers are liable to expulsion or have already been expelled by the immigration authorities. In this regard, the Committee would be grateful if the Government would provide more detailed information on legal proceedings instituted, and remedies and sanctions imposed on employers found to be in violation of the legal provisions relating to workers' statutory rights including vis-à-vis undocumented foreign workers.***

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

## Colombia

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)***

The Committee notes the comments from: the National Employers' Association of Colombia (ANDI), dated 31 August 2011 and 5 September 2012, supported by the International Organisation of Employers (IOE); the Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC), dated 30 August 2011 and 31 August 2012; the General Confederation of Labour (CGT), dated 1 September 2011; and the Government's reply to the observations from the trade union organizations. It also notes the conclusions of the report of the ILO high-level tripartite mission to the country from 14 to 18 February 2011, in the context of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

#### ***Technical cooperation project on international labour standards***

The Committee notes with *interest* the launching, in August 2012, of the project to promote compliance with international labour standards in Colombia, financed by the Government of the United States. The objectives of the project are: (1) to strengthen the institutional capacity of the Ministry of Labour, and particularly of the labour inspection services; (2) to strengthen existing social dialogue bodies and the social partners who participate in them; and (3) to strengthen the institutional capacity of the Government of Colombia to improve measures for the protection of trade union leaders, members, activists and organizers and to combat the impunity of perpetrators of acts of violence against them. The Committee also notes that the project envisages providing the necessary technical assistance as a priority to the units of the new Ministry of Labour responsible for combating the abuse of employment mediation (agencies) and other forms of contracting which are in violation of workers' rights (such as associated work cooperatives, simplified limited liability companies and temporary service enterprises) and to guarantee that collective accords are not used to undermine the position of trade unions or to prevent the conclusion of collective agreements. ***The Committee requests the Government to provide information on the implementation of the project and its impact on strengthening the labour inspection services.***

*Articles 2, 4 and 10 of the Convention. Coordination of the inspection system and numbers of inspectors.* The Committee notes that Act No. 1444 of 4 May 2011 re-established the Ministry of Labour through a restructuring of the Ministry of Social Protection and that Decree No. 4108 of 2 November 2011 determined the objectives, functions and structure of the Ministry of Labour, including with regard to labour inspection.

The Committee notes that the CUT and CTC welcome the creation of the Ministry of Labour but consider that the labour inspectorates of the departmental territorial directorates are uncoordinated in their action and that there is no labour inspection in rural localities, especially those where there are mining operations. The CUT, CTC and CGT continue to deplore the inadequate numbers of labour inspectors, despite the labour agreement concluded in 2011 with a view to updating the tripartite agreement signed in 2006, which contains the recommendations of the high-level mission including with regard to the importance and urgency of strengthening the labour inspectorate by increasing the number of inspectors. The CTC declares that although the total number of labour inspectors increased by 100, resulting in a new total of 524, the new inspectors have not yet taken up their duties. The CGT considers that assigning 100 out of the 480 extra labour inspectors at the Government's disposal in 2014 to supervise and monitor the sectors of horticulture, palm oil production, sugar production, dock work and mining is insufficient for these five sectors, where the greatest number of violations of workers' rights occur. According to the information from the CGT, there are 15,000 miners who, according to a recent report from the Ombudsman's Office, earn a living from some 3,600 illegal mines and many workers are subcontracted or outsourced in the major coal mining and petroleum companies. The CUT and CTC also allege that the country only has 16 safety inspectors for a total of 3,000 active mines and, according to the latter, the lack of inspection is visible in the increase in child labour, which is now said to involve 1,465,000 children in the country.

The ANDI, for its part, considers that the measures adopted by the Government and Congress (including the creation of new labour inspector posts and the implementation of the inspection plan for the key sectors) are proof of the country's commitment to observing the labour rights established by Convention No. 81. Of these measures, it highlights the budget allocations by the Government to recruit 480 new labour inspectors over a four-year period.

The Government in turn indicates that 100 new labour and social security inspector posts were created through Decree No. 1228 of 15 April 2011 and another 100 through Decree No. 1732 of 16 August 2012, thereby increasing the total number of inspectors, which stood at 424 in 2010, to 624 at the end of August 2012. Of this total, 451 had commenced their duties by the end of July 2012. It also indicates in its reports on the present Convention and Convention No. 129 that, by means of the restructuring, labour inspection services were created in the municipalities of Puerto Gaitán (Meta) and Orito (Putumayo) in addition to those that had already been set up in the municipalities of El Bague (Antioquia) and Jagua de Ibirico (César). The Committee also notes with *interest* that, in this context, an analysis of the structure, human resources, and location of all the territorial directorates, with regard to their central offices and to the labour inspectorates, was under way at the end of August 2012. ***The Committee requests the Government to provide information on the results of this analysis and its recommendations, and on any follow-up measures taken or contemplated and on any other measures taken with a view to extending or strengthening the coverage of the labour inspection system, particularly in remote rural localities.***

***The Committee also requests the Government to supply information on the manner in which the central labour inspection authority ensures effective coordination among the inspection services of the various territorial directorates and to send the updated organizational chart of the labour inspectorate and its structure at central, regional and municipal levels. Lastly, the Committee requests the Government to state the number of inspectors currently in active service and their geographical distribution in relation to the number and location of workplaces liable to inspection and the number of workers employed therein.***

*Articles 3(1)(b) and 17. Implementation of a preventive approach to labour inspection.* The CUT and CTC state that the “preventive inspection system” established by Decrees Nos 1293 and 1294 of 2009 and Decision No. 2605/09 has in practice turned into tolerance of violations of workers' rights.

According to the ANDI, the purpose of the “preventive inspection system” is to strengthen the monitoring function within enterprises. The lines of action of this system are to: raise awareness of and commitment towards the development of a culture of compliance; provide information on risks, disputes and non-compliance with labour obligations; streamline procedures; establish technologies and communications; ensure the participation of public and private enterprises and institutions; and reinforce the staff of the Ministry of Labour, with the focus on catering for users. The ANDI considers that the implementation of this system has promoted improvements in labour inspection in the country and has enabled the creation of forums for dialogue among the social partners and with the Ministry, the abolition of unnecessary procedures, the strengthening of the human resources of the Ministry and their qualifications, and producing changes in user behaviour.

According to the Government, this inspection model was presented to the Commission on Labour and Wage Policies, of which the CUT, CGT and CTC form a part. “Preventive inspections” were initially conducted in the formal sector and are not subject to authorization by the employer. Since the initial goal is the prevention and improvements to working conditions without having recourse to the imposition of penalties, communication is established with the enterprise to announce the presence of the inspector and explain his reasons for being there. “Improvement agreements” are concluded between the employer and the workers and in the event of non-compliance the inspector initiates a “reactive inspection” with a view to imposing penalties. Checks are carried out on the plant at the enterprise and, if documentation is involved, the employer may be requested to bring it to the inspection offices. Should the inspector detect infringements in the course of these checks, the relevant investigation must be conducted and the applicable penalties imposed.

The Committee reminds the Government, in the terms of the 2006 General Survey on labour inspection, paragraphs 279 and 282, that the advice and information provided for in *Article 3(1)(b)* of the Convention can only encourage compliance with legal provisions but should nonetheless be accompanied by an enforcement mechanism enabling those guilty of violations reported by labour inspectors to be prosecuted. The functions of enforcement and advice are inseparable in practice. This discretion provided for in *Article 17(2)* implies that inspection staff have the necessary capacity for judgement to be able to distinguish between serious or repeated wilful non-compliance, culpable negligence or flagrant ill-will, which call for a penalty, and an involuntary or minor violation, which may lead to a mere warning.

***The Committee requests the Government to explain how, as far as “preventive inspections” are concerned, Article 17(2) is applied, under which it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.***

***The Committee also requests the Government to supply information and data for the period covered by the next report concerning the criteria for the planning of different types of inspections, the proportion of “preventive inspections” in relation to inspections of a general and “reactive” nature, the observations made by inspectors in the context of “preventive inspections”, the period and manner in which inspectors check the implementation of “improvement agreements” and what action they take if the results are unsatisfactory. The Committee also requests the Government to provide information on any preventive measures which labour inspectors order or ensure are ordered,***

including immediately enforceable measures (Article 13(b)), when they identify defects in plant, equipment or working methods which may represent a danger to the health or safety of workers.

Lastly, the Committee requests the Government to state whether it has adopted measures to evaluate, with the participation of the social partners, the impact of the “preventive inspection system” on the effective application of the legislation relating to conditions of work and the protection of workers.

*Article 3(1)(c). Associated work cooperatives and pre-cooperatives.* In the comments which it had been addressing to the Government since 2008, the Committee has urged the Government to take steps to give effect in the context of associated work cooperatives to this provision of the Convention, which requires the labour inspection system to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. The Committee notes that although the CTC recognizes that the Government has adopted a number of important measures such as legislation to monitor the job placement role performed by associated work cooperatives, it considers that these measures have not succeeded in putting a stop to informal or precarious employment or to anti-union practices. The Government indicates that on several occasions it has expressed its concern regarding the distortion of the role of associated work cooperatives and that many aspects of the situation have been rectified through legal instruments which have established regulations for associated labour, stating its nature and fixing the rules for its structure and operation, and have also established an inspection programme targeting the sector.

The Committee previously welcomed the provisions of Act No. 1233 of 2008, which prevented associated work cooperatives from acting as a means of evading the application of labour legislation, including with regard to trade union rights. The Committee points out that section 63 of Act No. 1429 of 29 December 2010 again permits associated work cooperatives to act as intermediary enterprises for the recruitment of staff for activities not considered to be “permanent assignments”. However, the Committee observes with *interest* that section 1 of Decree No. 2021 of 8 June 2011, which partially implements Act No. 1233 of 2008 and section 63 of the abovementioned Act No. 1429, stipulates that the placement of labour is a function that belongs to temporary employment agencies and is not permitted for associated work cooperatives. Under the same provision, “permanent assignment” means an activity or function directly related to the production of goods or the provision of services which are characteristic of the enterprise. The Committee notes that sections 4 and 9 of the abovementioned Decree establish penalties for violations of this legislation, consisting of fines and/or dissolution and liquidation of the cooperative. Section 10 of the same Decree provides for a reduction of the penalty in cases when a subcontracted worker is entrusted with prohibited permanent operations or assignments if an indefinite employment relationship is formalized by means of a written contract.

The Committee also notes with *interest* the information highlighted by the ANDI concerning the setting up for public use of an anonymous complaints system regarding violations of labour rights, the implementation of an exclusive telephone helpline for dealing with complaints relating to associated work cooperatives, the creation of a link to the Ministry’s website for making complaints or suggestions, and the preparation of a handbook for the conduct of inspections in relation to the placement of labour.

The Committee further notes that the 2011 programme for prevention, supervision and monitoring in relation to associated work cooperatives and associated work pre-cooperatives, which contains guidelines to be followed by the territorial directorates of the Ministry to prevent misuse of associated work cooperatives, includes: (i) exchange of information between the territorial directorates and the relevant bodies; (ii) training for labour inspectors; (iii) training actions targeting associated work cooperatives; (iv) improvement agreements; and (v) monitoring in its own right, giving priority to entities accounting for the largest number of complaints and investigations, those which have been penalized, those that have associated workers who provide services in high-risk sectors, and those which have contracts in the mining, horticulture, health-care and sugar cane harvesting sectors.

The Committee also notes with *interest* that the Government has assigned 100 labour inspectors exclusively to monitoring the improper use of associated work cooperatives for the purpose of flouting workers’ rights, and also the statistical information regarding penalties imposed on them in 2010 and the first four months of 2011 and the schedule of inspections that were due in associated work cooperatives in 2011. **The Committee requests the Government to provide information on:** (i) inspections conducted in associated work cooperatives (indicating their respective sectors and regions), infringements recorded (indicating the relevant legal provisions) and penalties imposed (fines, suspension and/or withdrawal of recognized legal status); (ii) the reduced penalties laid down under section 10 of the abovementioned Decree No. 2021 of 2011; (iii) any measures taken or contemplated to ensure that labour inspectors inspect both registered and non-registered associated work cooperatives premises and exercise all their powers, not just those of checking documents, as previously called for by the CUT and CTC; and (iv) the number of “improvement agreements” concluded under the programme for supervision and monitoring of associated work cooperatives and their impact on the objectives of the Convention.

*Article 3(2). Removal of labour inspectors’ additional duties to ensure the effective discharge of their primary duties.* As regards additional duties in labour inspection, the CGT alleges that labour inspectors continue to perform many duties, including conciliation, which undermines their impartiality and also reduces the time that they can devote to the discharge of their primary duties. Although the CUT recognizes that labour inspectors were relieved of certain tasks, it considers that they have still have an excessive workload, since new tasks have been added, others were merged and the conciliation role persists, and this prevents them from conducting in situ inspections.

The ANDI refers in this respect to the removal of tasks from the inspectors' workload relating to: the approval of internal work regulations; monetary compensation for holidays; the authorization of loans, advances, various deductions or compensation for wages and those related to the registration of retirees, by means of Act No. 1429 of 2010.

The Committee notes with *interest* the Government's indications that Act No. 1429 of 2010 abolished 13 tasks that previously had to be performed by labour inspectors and Decision No. 1286 of 20 April 2011 relieved inspectors of the task of processing authorizations for severance payments and for the registration of retirees. The Government states that, under the terms of the abovementioned Decision No. 2605/09, the role of conciliation between the parties was assigned to a specific group of inspectors and inspection and monitoring were assigned to another group.

The Committee recalls that the issue of relieving the labour inspectorate of tasks not provided for in *Article 3(1)* of the Convention and in particular those performed in the context of dispute resolution has been the subject of comments since 2000. ***The Committee requests the Government to send a copy of Decision No. 2605/09 and to state how it is applied in practice with regard to the distribution of conciliation and inspection tasks for labour inspectors, at the central office and in territorial and municipal offices. It also requests the Government to provide information on the number of inspectors who perform conciliation duties and whether they are included in budget allocations for the labour inspectorate.***

*Articles 5(a), 17, 18 and 21(e). Effective cooperation between the labour inspection services and the judicial authorities. Adequate penalties and effective enforcement.* The Committee notes that the high-level mission emphasized in its conclusions the crucial nature of strengthening enforcement of the legislation and of effective penalties with a view to ensuring that acts of anti-union discrimination, including dismissal and intimidation, can be prevented, remedied and penalized by means of rapid, accessible and effective procedures.

The Committee notes that the Government does not provide the information which it requested on the role of labour inspectors in legal proceedings against employers who infringe the labour legislation, including in associated work cooperatives (*Article 17*), and on the level of penalties so that they have a deterrent effect (*Article 18*). It draws the Government's attention to paragraphs 291–306 of the 2006 General Survey on labour inspection and emphasizes that it is essential for the credibility and effectiveness of the labour inspection system for violations to be identified by national legislation and for the proceedings instituted or recommended by labour inspectors against employers guilty of violations to be sufficiently dissuasive and to make employers in general aware of the risks they run if they fail to meet their obligations. ***The Committee requests the Government to send information on the measures taken to ensure the deterrent effect of penalties for violations of the legal provisions – including those relating to anti-union discrimination (dismissal and intimidation) – which are enforced by labour inspectors, and for obstruction of the latter in the performance of their duties, and to ensure that the aforementioned penalties are effectively enforced. The Committee also requests the Government to send statistics of infringements detected by labour inspectors indicating the legal provisions concerned, the penalties imposed and, if applicable, the judicial action taken.***

***The Committee further requests the Government to indicate all the measures taken or contemplated to promote effective cooperation between the labour inspection services and the justice system, with a view to encouraging due diligence and thoroughness in the treatment by judicial bodies of infringements reported to them by the labour inspectorate, and also disputes in the same sphere referred to them directly by workers or their organizations.*** In this regard the Committee considers that a system for the registration of judicial decisions to which the labour inspectorate has access will enable the central authority to make good use of such data with respect to its objectives and include them in its annual report, as provided for in *Article 21(e)*. ***The Committee requests the Government to send information on the measures taken or contemplated with regard to establishing a register of judicial decisions accessible to the labour inspectorate.***

*Articles 6 and 15(a). Status, conditions of service and independence of labour inspectors.* The Committee notes with *interest* that under Decree No. 1227 of 15 April 2012 the pay conditions of labour inspectors were improved, since there was a harmonization of grades which resulted in a pay increase of three steps. However, the Committee also notes that the CUT and CTC allege that more inspectors with temporary status are being appointed and the CGT claims that a large number of inspectors do not have any job security, which is contrary to the terms of the Convention and constitutes an obstacle to the effectiveness of labour inspection. According to the ANDI, labour inspector posts belong to the administrative career category and so selection and promotion of employees is undertaken on the basis of suitability, ability and merit. Moreover, in accordance with Decision No. 2180 of 2008, inspectors come from diverse professional backgrounds: lawyers, engineers, economists, etc. The ANDI adds that the harmonization of grades for inspectors carried out in 2011 has also resulted in an increase in salary.

The Government reiterates that labour inspector posts are administrative career posts. When new posts are created or vacant posts are filled, appointments are made on a provisional basis while the National Civil Service Commission holds the relevant competition.

***The Committee requests the Government to indicate: (i) the current number of inspectors appointed on a provisional basis, compared with the number of inspectors who belong to the administrative career category; (ii) the duration of temporary appointments; (iii) the tasks assigned to temporary inspectors; (iv) the powers assigned to them;***

**and (v) in what manner it is ensured that they are independent of changes of government and of improper external influences, as prescribed by Article 6 of the Convention.**

*Article 7(3).* 1. *Training of labour inspectors.* As regards the allegations from the CUT and CTC that inspectors lack adequate and proper training and their competencies are not evaluated in the course of their duties, the Committee observes with **interest** that Decision No. 2180 of 2008 stipulates that one of the requirements for the post of labour inspector is to hold professional qualifications in law, medicine, industrial engineering, business administration or economics. As regards the recommendations of the high-level mission referred to above, concerning the implementation of an induction and training programme for labour inspectors, the Committee also notes with **interest** the information supplied by the Government to the effect that a specific training programme for labour inspectors has been implemented and it is planned to give them training en masse regarding analysis of labour hazards, the law of evidence and the updating of standards. **The Committee requests the Government to provide detailed information on the specific programme implemented for the training of labour inspectors, stating: (i) its duration, with regard to both initial and further training; (ii) the number of inspectors who will benefit from this programme; (iii) the subjects covered, differentiating between initial and further training; and (iv) the training body. The Committee requests the Government to indicate the measures planned or adopted with a view to ensuring the durability of both initial and further training for labour inspectors. The Committee also requests the Government to provide information on the manner in which labour inspectors are evaluated in the course of their duties.**

2. *Training in the area of freedom of association.* The Committee observes that during the ILO high-level mission to the country from 14 to 18 February 2011, in the context of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), various trade union representatives highlighted the inadequacy or complete absence of replies from the labour inspectorate in relation to certain cases relating to freedom of association and collective bargaining, including anti-union conduct from certain inspection officials. They also emphasized that any initiative designed to strengthen labour inspection should include a component relating to freedom of association and collective bargaining. **The Committee requests the Government to indicate the measures taken or planned to ensure that programmes of initial and further training for labour inspectors include a specific module of awareness-raising and training with respect to freedom of association.**

*Articles 11, 12 and 15(a).* *Material means placed at the disposal of the labour inspectorate, and principles of freedom of entry and independence on the part of inspectors.* The Committee notes with **interest** the information provided by the Government regarding adjustments to posts in 28 territorial directorates in 2009 and 2010, with investment in the form of 230 computers, printers, communication networks and Internet access. It also notes the documents cited by the Government containing statistical information on budget implementation by the territorial directorates of the Ministry, including budget items for transport costs and expense allowances.

With regard to means of transport, the Committee notes the CGT's statement that the cost of many inspections is borne by the trade unions or the employer. The CUT and CTC also emphasize the lack of material resources for travel, especially in rural areas. According to the CUT, Bill No. 139 which is before the Congress of the Republic leaves the possibility open for inspectors to receive assistance from employers with regard to their travel to remote areas, and this could undermine their impartiality.

The Committee recalls that in its comments in 2004 (92nd Session) and in paragraph 253 of the 2006 General Survey, it welcomed the fact that labour inspection staff in Colombia were forbidden, via a circular from the Ministry of Labour and Social Security, to use for professional purposes vehicles made available to them directly or indirectly by employers, trade unions or workers. It also recalls that, in accordance with paragraph 225 of the 2006 General Survey, the prohibition on labour inspectors having any interest whatsoever in the enterprises under their supervision applies to considerations or services offered by employers or workers.

In its previous comments the Committee stressed the fact that the travel expenses of labour inspectors are only reimbursed up to an amount of 4,000 Colombia pesos (COP) and so higher costs have to be borne by labour inspectors themselves, and it referred to the claim by the CUT and CTC that, in practice, travel expenses are not reimbursed when inspections are carried out without prior authorization from the director of the territorial directorate, which can take up to one week or more despite the urgent nature of certain situations. In their latest comments the CUT and CTC add that unforeseen expenses are not repaid either. With reference to paragraphs 265–266 of the 2006 General Survey, the Committee recalls the principle of inspectors' freedom to enter workplaces laid down by *Article 12* of the Convention, which implies that certain obstacles to or restrictions on inspectors' free initiative, including prior authorization, may be contrary to the Convention.

**The Committee requests the Government to take the necessary steps to provide labour inspectors with adequate transport facilities for the performance of their duties, both in the central office at the Ministry and in the various territorial directorates and the labour inspectorates furthest removed from urban centres, and to reimburse labour inspectors for any unforeseen costs and any travel expenses necessary for the performance of their duties. The Committee requests the Government to keep the ILO informed of any progress made in this regard. The Committee also requests the Government once again to provide information on the application in practice of labour inspectors' right to enter freely, without prior authorization, workplaces liable to inspection (Article 12(1)(a)).**

*Article 15(c). Principle of confidentiality regarding the source of complaints.* For a number of years the Committee has been urging the Government to take steps to establish the necessary legal basis to ensure that labour inspectors respect the confidentiality of complaints so as to protect workers from any reprisals from the employer or his representative. The Government indicates that it has been the usual practice of the Ministry to keep a record of the name of the complainant when the information is obtained verbally. It adds, however, that the Ministry will issue an administrative notice giving instructions regarding the discretion to be maintained by labour inspectors in accordance with this provision of the Convention and that the text of the draft notice will be forwarded to the Office. **The Committee requests the Government to ensure that the necessary measures are taken without further delay to secure to workers the protection prescribed by this provision of the Convention and requests it to send a copy of any relevant legislative text which is adopted.**

*Articles 20 and 21. Annual report on the work of the inspection services.* The Government indicates that through the Under-Ministry of Labour Relations, the Ministry of Labour issues a monthly bulletin containing information on inspection activities. The Government also declares that it will have available a computerized system for the registration and analysis of data on labour inspection, enabling access to and use of such information, which will consolidate and update all existing databases on labour inspection and be accessible to the user. The Committee notes with *interest* the statistical information sent by the Government on inspections carried out in 2010, 2011 and the first half of 2012, administrative investigations launched and penalties imposed during the same periods, and industrial accidents and cases of occupational disease that occurred in 2009, 2010, 2011 and the first half of 2012. The Committee draws the Government's attention to the guidance contained in Part IV of the Labour Inspection Recommendation, 1947 (No. 81), concerning the form in which the information required by *Article 21* may be presented. However, observing that no statistics have been provided of workplaces liable to inspection or the number of workers employed therein (*Article 21(c)*), the Committee reminds the Government that these data are essential to enable the central inspection authority to evaluate the rate of coverage provided by the labour inspection system and its needs in terms of human and material resources and to take account of these when approving the budget. The Committee invites the Government to refer to its general observation of 2009 with regard to the desirability of inter-institutional cooperation in relation to the establishment, improvement or updating of a register of workplaces liable to inspection. **The Committee hopes that the Government will send in the near future an annual inspection report which meets the requirements of form and substance prescribed in Articles 20 and 21 of the Convention.**

*Article 22 et seq. Part II of the Convention. Labour inspection in commercial workplaces.* **The Committee requests the Government to send any information relating to examination, in consultation with the employers and workers, of a possible extension of the ratification of the Convention to commercial workplaces.**

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 2013.]**

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1976)**

The Committee refers the Government to its observation under the Labour Inspection Convention, 1947 (No. 81), in so far as they are also concerned with the application of the present Convention.

The Committee takes note of the Government's report and the new comments from the Single Confederation of Workers (CUT) dated 31 August 2012, forwarded to the Government on 13 September 2012. The comments refer for the most part to matters already raised by the Committee, including the number of inspectors, their training, the number of visits to agricultural undertakings (212 in 2011, i.e. far too low to cover the 3,567,000 workers employed in this sector), the independence and autonomy of inspectors, the lack of transport facilities suited to the performance of inspection duties in remote farms, the lack of secretaries or auxiliaries and technical teams for the preventive control required by *Article 17 of the Convention*, and the lack of information on labour inspection in agriculture in the Ministry of Labour's reports. **The Committee asks the Government to make any comments it deems appropriate in relation to the observations made by the CUT.**

*Articles 6(1)(a), 14, 21 and 24. Supervisory function of the system of labour inspection in agriculture, frequency and scope of inspection visits and adequate and effectively applied sanctions.* The Committee notes the information from the Government that the Ministry of Labour devised a plan of inspection visits specifically targeting critical sectors such as agriculture, including flower, palm and sugar cane growing. According to the Government, inspection in the palm tree sector has been exemplary since a sizeable fine was imposed for the first time. The Government also states that the Ministry launched a campaign to formalize employment which includes visits to undertakings in the sugar and palm growing sector for the purpose of checking on compliance with social security obligations. The Committee notes the information set out in table form on inspection visits conducted in the agricultural sector between January and July 2012, on general inspections conducted in June 2012, and on the number of penalties imposed on undertakings in the sugar, flower and palm growing sectors between January and February 2012. **The Committee requests the Government to provide information on the measures taken to ensure, in accordance with Article 21 of the Convention, that agricultural undertakings are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions on conditions of work and the protection of workers, supervision of which is entrusted to**



labour inspectors. It also asks the Government to provide information on the number and location of the agricultural undertakings liable to inspection (Article 14(a)(i)) and the number and classes of persons working in such undertakings (Article 14(a)(ii)). The Committee furthermore requests the Government to provide detailed information on breaches of the labour provisions detected by inspectors in the course of their visits to agricultural undertakings (indicating the provision in question), the penalties imposed and any judicial action taken.

*Article 6(1)(c). Associated work cooperatives and pre-cooperatives.* The Committee refers the Government to its comments under Article 3(1)(c) of Convention No. 81. It takes note of the information supplied by the Government to the effect that the data on labour inspection visits in cooperatives are being systematized by sector in 2012, including in the agricultural sector. **The Committee would be grateful if the Government would provide information on inspection visits to associated work cooperatives and pre-cooperatives in the agricultural sector, the infringements detected (indicating the legal provisions breached) and the penalties imposed (fines, annulment of legal status).**

*Articles 9, 14, 15 and 16. Inadequacy of the structures, personnel and material and logistical resources of the labour inspection services for agriculture.* In its previous comments the Committee urged the Government to take the necessary steps to strengthen the structures and means of action available to labour inspectors in charge of agricultural undertakings (availability of premises, human and material resources, training that takes account of needs specific to agriculture, etc.). The Committee refers in this context to its comments under Convention No. 81 regarding the progress made in the setting up of labour inspection services in some towns, and to the human and material resources of the labour inspection services. It also refers to an international cooperation project "Promoting Compliance with International Labour Standards in Colombia" aiming among other things to strengthen the inspection and monitoring system, and to an assessment which was being carried out in this context at the end of August 2012, of the structure, human resources, technology resources and the location of all territorial directorates and labour inspection directorates. **The Committee requests the Government to send information on the results of the assessment of labour inspection in agriculture and its recommendations, and on any follow-up measures taken or envisaged. It also asks the Government to provide information on any other measures implemented for the purpose of extending and reinforcing the coverage of the labour inspection system, in particular in remote rural areas (sufficient number of inspectors, adequate training accessible and sufficiently equipped local offices and necessary transport facilities for the performance of labour inspection functions in agriculture).**

*Article 17. Participation of labour inspectors in preventive control in agricultural undertakings.* The Committee reminds the Government that it has been raising this issue since 2002. **The Committee urges the Government to ensure that measures are taken to give effect both in law and in practice to this provision of the Convention according to which the labour inspection services in agriculture shall be associated, in such cases and in such manner as may be determined by the competent authority, in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety. The Committee asks the Government to provide information in its next report on any such measures taken, together with copies of any relevant texts.** The Committee refers the Government in this connection to the guidance provided in Paragraph 11 of Recommendation No. 133, which supplements the Convention, on the instances and conditions in which inspectors could be associated in preventive controls.

*Articles 26 and 27. Annual report.* The Committee refers to its comments under Articles 20 and 21 of the Labour Inspection Convention, 1947 (No. 81). **It hopes that the Government will be in a position to send, at the earliest possible date, an annual report on the work of the labour inspection services in agriculture, either separately or as part of its general annual report.**

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

## Comoros

### Labour Inspection Convention, 1947 (No. 81) (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:

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 (DWCP), 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 that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Absence of practical information to enable the Committee to assess the operation of the labour inspectorate in relation to the provisions of the Convention and relevant national laws.* The Committee notes that the report provided by the Government on the manner in which the Convention is given effect in law to a large extent reproduces the report received in 2008.

The Committee notes the updated information regarding the number and geographical distribution by category of labour inspection staff. It notes, by comparison with the data given in the report received from the Government in 2008, a substantial reduction in labour inspection staff, in particular labour inspectors (from 75 to 55) and principal controllers (from 96 to 72). The Committee recalls that, according to *Article 10*, in order to secure the effective discharge of the duties of the labour inspectorate, the number of labour inspectors must be determined with due regard to the importance of the duties which inspectors have to perform, in particular the number, nature, size and situation of the workplaces liable to inspection; the number and classes of workers employed in such workplaces; the number and complexity of the legal provisions to be enforced; the material means placed at the disposal of the inspectors; and the practical conditions under which visits of inspection must be carried out.

While the laws and regulations concerning labour inspection and its mandate and prerogatives are available, it must be noted that there are no numerical data on other areas defined in *Article 10* and, as the Government admits, there are no specific measures for giving effect to the provisions of *Article 11* concerning the material conditions of work of labour inspectors, who do not have access to the transport facilities required for them to carry out their duties. The Committee notes, on the other hand, that according to the Government, inspectors' travel and related costs are reimbursed by the competent authority on presentation of invoices, which was not always the case, according to the report received in 2008.

With regard to the tools needed to assess the operation of the labour inspection system in practice, namely, the reports on inspection activities (*Article 19*) and the annual report of the central inspection authority, which under the terms of *Articles 20 and 21* has to be published and transmitted to the ILO, the Committee notes with regret that none of the regional labour inspection activity reports referred to by the Government as having been transmitted to the Office since the date of ratification of this Convention has actually been received to date. Furthermore, the Government has not communicated a copy of Decree No. 2009-469 of 24 December 2009 concerning the organization of the Ministry of Labour and Social Security.

The Committee notes, however, that the Government is preparing a memorandum with a view to improving the functioning of the labour inspection service and that the Labour Code is currently being revised, in particular with regard to the powers and prerogatives of the labour inspectors.

The Committee also notes that the Government refers for the first time to a draft text on the status and conditions of service of labour inspectors (*Article 6*), which was supposedly drawn up in 2000 and submitted to the ministry responsible for the civil service. According to the Government, the final examination of that draft will depend on the revision now under way of the general civil service statutes. The Committee notes that this document has not been received by the Office, although according to the Government it was transmitted.

*The Committee once again requests the Government to provide in its next report all the available information needed to assess the application of the Convention in law and in practice. This information should cover, among other matters: (i) the up-to-date geographical distribution of public officials responsible for labour inspection as defined in Article 3(1) of the Convention; (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; (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 advancement 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 visit 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 Committee also requests the Government to communicate a copy of any inspection activity reports originating from regional directorates, including the reports cited in the Government's reports sent to the ILO in 2008 and 2011; a copy of the draft or final text of the regulations relating to the status and conditions of service of labour inspectors; copies of the proposed amendments to the Labour Code, and of the memorandum which was reportedly sent to the ILO and is intended to improve the functioning of the labour inspection service.*

*In order to establish a labour inspection system that will respond to the social and economic goals which are the object of the Convention, the Committee urges the Government to make every effort to adopt the measures needed to implement the measures described in the Committee's general observations made in 2007 (concerning the need for effective cooperation between the labour inspection service and the judicial system), in 2009 (concerning the need for statistics on industrial and commercial workplaces subject to labour inspection and the number of workers covered, and 2010 (concerning publication of the content of an annual report on the functioning of the labour inspection system). The Committee recalls once again the possibility of obtaining technical assistance from the ILO and of requesting, within the context of international financial cooperation, financial assistance in order to give the necessary impetus to the establishment and operation of the labour inspection system, and would be grateful for any information on progress made and difficulties encountered.*

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

## Costa Rica

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

The Committee notes the observations from the Confederation of Workers Rerum Novarum (CTRN), dated 31 August 2011 and 30 August 2012, concerning the following issues: (i) the insufficient number of labour inspectors in

relation to their increased workload; (ii) the allocation of a significant proportion of inspectors' hours of work to conciliation; (iii) the performance of administrative tasks by labour inspectors owing to the lack of clerical staff; (iv) the infrequent nature of inspections; and (v) the inadequacy of transport facilities, travel allowances and office equipment. The Committee also notes the Government's reply of 2 January 2012 to the earlier observations referred to above and its communication of 22 November 2012 indicating that consultations are being held with the competent authorities in order to prepare a reply to the later observations from the CTRN. Lastly, the Committee notes the observations from the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP), which were sent by the Government on 12 April 2012.

*Articles 3, 10, 11, 16 and 21(c) of the Convention. Provision of adequate human resources and material and logistical means to enable the labour inspectorate to discharge its duties effectively.* The Committee previously asked the Government to provide information on the number of industrial and commercial workplaces liable to inspection, together with their geographical distribution; the number and category of workers employed therein; the number of vehicles available for labour inspectors or the transport facilities that they may use in the course of duty; and any other information relevant to evaluation by the competent authority of the needs of the labour inspectorate in terms of human resources, material means and transport facilities. The Government indicates that, since September 2011, the National Directorate for Labour Inspection has access to information on workers registered in the centralized payment collection system of the Costa Rican Social Security Fund, and this facilitates the planning of workplace inspections. It also states that a total of 19 vehicles are at the disposal of labour inspectors for the performance of their duties, distributed as follows: five for the central region; three for the Huétar Norte region; and two each for the regions of Chorotega, Brunca, Pacífico Central and Huétar Atlántica, with inspectors also making use of public transport for their duty travel.

The Committee notes with *interest* that an assessment of the needs of the labour inspectorate was carried out with ILO technical assistance in response to a request from the Government in April 2012. It notes that the recommendations made as part of this assessment include establishing a database or adapting any existing database to which the labour inspectorate has access so that it contains data relevant to the labour inspectorate, such as data on workplaces liable to inspection. The Committee reminds the Government that the registration of workplaces liable to inspection, and the identification of activities carried out there and of the categories of workers employed therein, are key elements in determining labour inspection needs and priorities for action with a view to improving coverage. ***The Committee therefore requests the Government to indicate to what extent it intends complying with the recommendations regarding this field contained in the assessment and to state what measures have been taken or are envisaged in this respect.***

The Government also states that, with a view to maintaining the operational capacity of the labour inspectorate, which is one of the goals of the Plan of Action (June 2012–September 2013) for the strengthening of the labour inspectorate in the context of technical assistance from the ILO, and in view of the impending retirement of a large number of labour inspectors and the austerity policy being implemented by the Government, it plans to take the necessary steps with regard to the budgetary authorities to ensure that the inspector posts that become vacant are not frozen and are filled, so as to maintain a total of 100 inspectors in active service. ***The Committee requests the Government to provide information on any changes in the number of labour inspection staff.***

*Articles 5(a), 19, 20 and 21. Periodic reports and cooperation necessary for the publication of an annual report on the work of the labour inspectorate.* The Committee noted that the “Cumple y Gana” project was revived at the end of 2008, so as to continue the collaboration on reinforcement of the labour inspectorate of the various countries of Central America, and was due to be completed in September 2012. ***Noting that no information has been sent on this subject, the Committee again requests the Government to send information on the results of the “Cumple y Gana” project and on the pilot experiment conducted in the construction sector and its impact in terms of compliance with the labour regulations.***

The Committee notes that, according to the information contained in the abovementioned assessment of the needs of the labour inspectorate, the labour information and case administration system (SILAC) has been providing nationwide coverage since 2012 and can be used as a statistical, information and monitoring tool with regard to the work of the labour inspectorate at national level. It also notes that the recommendations in this assessment include the updating of SILAC, incorporating the administrative register of the National Directorate for Labour Inspection, so that, in addition to acting as an electronic register of inspection files, it can also be used to produce labour statistics. ***The Committee expresses the hope that technical assistance from the ILO will facilitate the adoption by the Government of the necessary measures to enable local inspection offices to prepare periodic reports on the results of their work, as required by Article 19 of the Convention, and that these reports will enable the central inspection authority to prepare an annual report in accordance with Articles 20 and 21. It requests the Government to send information on any progress made in this respect.*** The Committee refers in this regard to the guidance contained in Part IV of Recommendation No. 81, regarding the form in which the information required by *Article 21* of the Convention may be presented.

*Article 12(1)(a) and (b). Free access of labour inspectors to workplaces.* The Committee notes that no measures appear to be provided for under the Plan of Action for strengthening the labour inspectorate to comply with the Committee's frequently repeated requests regarding the bringing of the national legislation into conformity with the Convention, so that labour inspectors are authorized to enter at night all workplaces liable to inspection, regardless of the working hours of those workplaces. ***The Committee therefore again requests the Government to ensure that measures***

are taken to bring the legislation into conformity with the relevant provisions of the Convention, to supply information on any progress made in this regard and to send copies of any relevant legal texts, once they have been adopted.

*Articles 12(2) and 15(c). Notification of the inspector's presence when carrying out an inspection and the principle of confidentiality.* In reply to the request which has been repeated since 2004 to take the necessary steps to grant labour inspectors the right to refrain from notifying their presence to the employer or his or her representative at the beginning of the inspection, when they consider that such notification may be prejudicial to the performance of their duties, the Government indicates that labour inspectors are governed by the provisions of Conventions Nos 81 and 129. **The Committee urges the Government to take measures to ensure that the legislation authorizes labour inspectors to refrain from notifying their presence to the employer or his or her representative during an inspection, when they consider that such notification may be prejudicial to the performance of their duties. It requests the Government to provide information on any progress made in this respect and to send copies of any relevant legislative texts.**

With regard also to the need to take the necessary measures to amend the handbook of labour inspection procedures to incorporate the obligation of confidentiality with regard to complaints as provided for in *Article 15(c)* of the Convention, the Committee notes the Government's reference to plans to amend the handbook in 2012 and its hope that it will therefore be in a position to report in the near future that progress has been made in this respect. **The Committee requests the Government to provide information on this matter in its next report.**

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)**

The Committee refers the Government to its observation under the Labour Inspection Convention, 1947 (No. 81), in so far as they are also concerned with the application of the present Convention.

The Committee notes the comments of 31 August 2011 from the Confederation of Workers Rerum Novarum (CTRN) and the Government's reply of 2 January 2012. It also takes note of new comments submitted by the CTRN dated 30 August 2012, and notes that the matters they raise are the same as those in the comments of 31 August 2012, which the Committee addressed in its previous observation. **The Committee asks the Government to make any comments it deems appropriate in relation to the observations made by the CTRN.**

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

## **Cuba**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1954)**

The Committee notes the Government's report and the observations on the application of the Convention made by the Coalition of Independent Trade Unions of Cuba (CSIC) in a communication dated 30 August 2012. It also notes the Government's reply of 1 November 2012 to these observations.

The CSIC alleges that the labour inspectorate is more a mechanism of social control, intimidation and pressure than a mechanism for the protection of workers, and describes the lack of independence of the labour inspectorate vis-à-vis political pressure from the Communist Party, the Government and the Workers' Union of Cuba (CTC). The CSIC considers that where the State is the sole employer it becomes impossible to apply the principle of independence laid down in *Article 15(a) of the Convention* and that, further to the recent possibility of working on a self-employed basis, labour inspectors have become the enemies of self-employed workers with a system of disproportionate fines which frequently gives rise to abuses that threaten the existence and further development of self-employment. The Government disputes the allegations made by the CSIC. The Government states that the CSIC is not a trade union organization and is not made up of Cuban workers. The Government also states that it fulfils its obligations strictly and that tripartite consultations are held before it sends its information. The Government declares that the labour inspectorate is not a mechanism for pressurizing or intimidating workers but, in accordance with section 296 of the Labour Code, it enforces the applicable legislation relating to labour, social security and occupational safety and health. The Government adds that self-employed workers are not liable to inspection by this mechanism; it is a responsibility discharged by local government structures so that the provisions relating to aspects such as health, working conditions and transport in the branch of work concerned are observed. It points out that following long discussions involving the participation of Cuban citizens with diverse ideologies and religious beliefs from various sectors, a comprehensive process for the updating of the economic model of the country has been approved and this process recognizes and promotes, in addition to socialist state enterprises, other non-state modes of operation. The Government considers that it would therefore be contradictory, to say the least, to claim that the existence and development of the latter are under threat.

*Articles 12 and 15(c). Restriction of the principle of inspectors' freedom of access to workplaces liable to inspection and the principle of confidentiality.* For a number of years the Committee has noted that sections 11 and 12 of the Regulations of 2007 on the national labour inspection system establish the requirement for inspectors, at the beginning of each inspection visit, to present to the employer a copy of a written inspection order indicating, among other things, the purpose of the inspection, and has asked the Government to adopt measures to ensure that the national legislation is

brought into conformity with *Article 12(1)*, in conjunction with *Article 15(c)* of the Convention. The Government reiterates that confidentiality with regard to complaints and their sources is maintained in practice and that no prior notification or order is presented to the employer in the case of surprise inspections resulting from a complaint or any other cause. However, the Committee points out that sections 12 and 13 of the abovementioned Regulations, which require inspectors, at the beginning of each inspection visit, to present the employer with a copy of a written inspection order indicating the purpose of the inspection (section 11), are contrary to the provisions of the Convention in this regard, namely *Article 12(1)(a)*, which stipulates that labour inspectors must be empowered to enter freely any workplace liable to inspection, and *Article 15(c)*, which establishes the principle of confidentiality with regard to complaints and their sources. The Committee further recalls that, according to *Article 12(2)*, labour inspectors should be authorized to refrain from notifying the employer of their presence during an inspection visit if they consider that such notification may be prejudicial to the performance of their duties. ***The Committee therefore again requests the Government to ensure that measures are taken without delay to amend the legislation in such a way that it gives full effect to the Convention in this regard, and to send a copy of any legislative text adopted towards this end.***

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

## 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:

*Articles 4, 5, 7, 10, 11, 20 and 21 of the Convention. Administrative decentralization and labour inspection.* The Committee notes the information provided by the Government in its report that labour inspection is a function that is considered to be an integral part of the national public service. The Government adds that it has prepared a draft Decree containing general provisions governing officials and managerial staff in the General Labour Inspectorate, and that this draft text has been submitted to the Prime Minister for signature. It adds that it undertakes to make the labour inspectorate a General Directorate and, at the 100th Session of the International Labour Conference, it referred to the reform of the General Labour Inspectorate into a specialized service enjoying administrative and financial autonomy to increase its effectiveness.

While noting these developments, the Committee also observes that the Government has not provided any documents enabling the Committee to assess the manner in which effect is given to the provisions of the Convention throughout the country. In particular, no report on the work of the inspection services has been received. With reference to previous comments, the Committee draws the Government's attention to the risk of the weakening of the labour inspection system following the decentralization of the respective functions and responsibilities, if this decentralization is not accompanied by the effective transfer of the necessary resources for the functioning of the decentralized labour inspection services, to guarantee the protection of the workers covered by the Conventions throughout the national territory. ***The Committee therefore requests the Government to provide a copy of the Decree issuing general provisions governing officials and managerial staff in the General Labour Inspectorate as soon as it has been adopted, and to provide detailed information on the announced reform of the General Labour Inspectorate and the organizational plan of the labour inspection system at both the national and provincial levels. The Committee also once again requests the Government to provide copies of any texts or documents, including any report on the activities of the labour inspection, which would enable the Committee to assess the manner in which effect is given to the provisions of the Convention in practice.***

*Articles 3(2), 6 and 15(a). Integrity, independence and impartiality of labour inspectors.* In reply to the Committee's previous comments concerning the allegations of corruption of labour inspectors exercising parallel activities made by the Confederation of Trade Unions of Congo (CSC), the Government indicates that, in accordance with Act No.81-003 of 17 July 1981, labour inspectors cannot perform a second job. The Committee also notes that with a view to improving their status and conditions of service, a permanent bonus has been awarded for special duties to labour inspectors and controllers. ***The Committee would be grateful if the Government would provide clarifications on the status and conditions of service of labour inspectors at both the central and provincial levels and to transmit copies of the relevant legal texts. Please also indicate the percentage increase in the permanent monthly bonuses provided to labour inspectors and whether this increase covers the staff of the labour inspection in all the provinces of the country. The Committee also requests the Government to provide information on the disciplinary procedures and sanctions applicable in the event of violations of Act No. 81-003 of 17 July 1981 on the prohibition of the exercise of a parallel activity by labour inspectors.***

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 near future.***

## Djibouti

### Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63) (ratification: 1978)

*Failure to fulfil reporting obligations. Technical assistance to help member States fulfil their reporting obligations and comply with the provisions of the Convention.* The Committee notes with **regret** that the Government has not submitted information since October 2005. It hopes that a report will be provided for examination at its next session and that it will contain information on the establishment of an observatory on employment and training. **The Committee invites the Government to submit a report containing full and detailed information on the measures taken to give effect to the Convention by replying to the questions in the report form under each of its provisions.** The Committee draws the Government's attention to the possibility of seeking technical assistance from the specialized units in the Office to fill the gaps in the implementation of the Convention.

*[The Government is invited to reply in detail to the present comments in 2013.]*

### Labour Inspection Convention, 1947 (No. 81) (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 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.*

## Ecuador

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1975)

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 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 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 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.

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

## El Salvador

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)**

*Articles 6, 7, 12(1)(a), (b) and (c)(i) and (2), and Article 17(2) of the Convention. Status and conditions of service of labour inspectors: scope of inspectors’ right to enter workplaces and their authority to investigate; freedom of inspectors to decide to issue warnings or advice instead of instituting or recommending proceedings. The Committee notes with **interest** the information sent by the Government to the effect that measures have been taken to promote the scheduling of night visits by inspectors, and the attached standard reports for night inspections. It also notes that according to the Government the Ministry of Labour and Social Welfare, with technical and financial support from the ILO in the context of the project “Verification of the implementation of the White Paper recommendations”, is pursuing its work to amend the Act on the organization and functions of the labour and social security sector (LOFT) so as to bring the law into line with the provisions of the Convention. The Government states that the draft amendments are currently under examination by the Higher Labour Council, which is tripartite. The Committee refers to its previous comments on the need to: (i) provide a basis in law for the right of labour inspectors to enter freely at any hour of the day or night any workplace liable to inspection (Article 12(1)(a)), and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection (Article 12(1)(b)); (ii) to abolish the requirement for the employer, the workers or their representatives to be present during the inspection; and (iii) to authorize labour inspectors not to notify the employer or his representative of their presence if they consider this preferable in the interests of effective supervision. **The Committee requests the Government to take the necessary steps to ensure that the draft amendment of the LOFT reflecting the points raised is adopted shortly, and to send a copy of it to the Office.***

*Further to its previous comments, the Committee also asks the Government to keep the Office informed of any progress made in the revision of the LOFT regarding the following: (i) recognizing labour inspectors as public officials and assuring them of stability of employment and career prospects (category I inspectors, category II inspectors, supervisors) (Article 6); (ii) recruiting inspectors by competition (Article 7); (iii) discretion of labour inspectors to give offenders warning or advice before envisaging proceedings (Article 17(2)).*

*Article 14. Notification of industrial accidents and cases of occupational disease to the labour inspectorate. In its previous comments the Committee referred to the need for the labour inspectorate to be informed of industrial accidents and instances of occupational disease with a view to preventing occupational risks. The Committee notes that according to section 8 of the Act on the general prevention of risks at work (LPRT), the programme on management of the prevention of occupational risks in enterprises must provide for an up-to-date record of accidents and other dangerous incidents. It also notes that according to LPRT section 66, injuries caused by occupational accidents must be notified in writing to the General Directorate of Social Welfare within 72 hours and all fatal accidents must be notified immediately to the same Directorate. Furthermore, the Government indicates that in order to give effect to the provision of section 66 and facilitate their application by employers, the Ministry of Labour and Social Welfare has set up a National System for the Notification of Occupational Accidents (SNNAT). The Committee refers to paragraph 118 of its 2006 General Survey on*



labour inspection, and points out that it is vital that formal mechanisms be put in place to provide the labour inspection service with the data it needs to identify high-risk activities and the most vulnerable categories of workers and to carry out research into the causes of occupational accidents and diseases in establishments and enterprises liable to inspection. **The Committee therefore urges the Government to ensure that measures are taken to define the instances of occupational accidents and diseases to be notified to the labour inspectorate and the procedure for doing so. The Government is asked to provide copies of any texts adopted in this connection.**

*Articles 19, 20 and 21. Publication and communication to the ILO of an annual inspection report.* The Committee notes that significant progress has been made with the electronic case management system (SEMC). It notes with **interest** that the system has been installed in the 14 departmental offices, that an electronic register of cases is now operational, that the inspection visit procedures, the standard report forms and the method for treating cases have been revised and standardized and that reports and charts have been drawn up. The Government also indicates that with technical and financial support from the ILO it is working on a yearbook of labour statistics which should contain information on all the Ministry's activities, including labour inspection. **The Committee hopes that the measures taken to improve the SEMC will help the local inspection offices in the preparation of the periodical reports on the results of their activities required by Article 19, and that such reports will be used by the central inspection authority as a basis for the annual report to be published and transmitted to the ILO in accordance with the provisions of Articles 20 and 21.** The Committee reminds the Government in this connection of the guidance to be found in Part IV of Recommendation No. 81 as to how the information required by *Article 21* might be presented.

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1995)**

The Committee refers the Government to its comments under the Labour Inspection Convention, 1947 (No. 81), in so far as they are also concerned with the application of the present Convention.

*Articles 9(3), 11, 14 and 15 of the Convention. Reinforcement of material facilities available to labour inspectors in agriculture, specific training of labour inspectors working in agriculture and collaboration between the inspection services in agriculture and other institutions.* With reference to its previous comments, the Committee notes with **interest** that, according to information communicated by the Government, over the past years the number of vehicles available to the labour inspection services working in agriculture has significantly increased, rising from eight vehicles in 2008 to 38 in 2012 (three of which have both front-wheel and rear-wheel drive). The Committee nevertheless notes that most of the vehicles (27) are assigned to the San Salvador office, while two other offices have three vehicles, five have one vehicle and six others have none. The Committee understands that, in the departments of Sonsonate and Ahuachapán, for example, which have one vehicle and no vehicles respectively, agriculture is the main activity. **It would therefore be grateful if the Government would provide an explanation of the criteria taken into account for the distribution of vehicles among the various inspection services.**

The Committee requested the Government to provide detailed information on the frequency, content and duration of the specific training courses organized for labour inspectors working in the agricultural sector, and on the number of inspectors who took part. It notes that this information is not reflected in the tables on training given to labour inspectors from 2009 to 2012 which feature in the Government's report. **The Committee therefore requests the Government to indicate the measures taken to give labour inspectors in agriculture adequate training for the performance of their duties which takes particular account of the particularities inherent in the different worker categories, the type of work carried out and the specific risks to which the workers in agriculture and their families are exposed.**

The Committee requested the Government to take measures to ensure that labour inspectors working in the agricultural sector may rely on the collaboration of duly qualified technical experts (doctors, chemists, security engineers) to solve problems requiring technical knowledge beyond the scope of their competence and to keep the ILO informed. The Government indicates that, when the need arises, labour inspectors working in agriculture have access to technical support from the General Directorate of Social Security. **The Committee would be grateful if the Government would specify the ways in which these technicians collaborate with the labour inspection services in agriculture, including with those in departmental or regional offices.**

## **Estonia**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2005)**

*Article 3(1)(b) of the Convention. Preventive activities of the labour inspectorate.* The Committee notes with **interest** the information contained in the Annual Labour Inspection Reports for 2009–11, available on the labour inspectorate's website, on the numerous information and training activities carried out by the labour inspectorate. These include the holding of information days at 26 high schools throughout the country and comprehensive training activities for 623 work environment specialists and managers of small and medium-sized enterprises (SMEs) in 2011, campaigns on different subjects, such as stress at work and working and rest time, and an electronic newsletter which is open to subscriptions with articles by the labour inspectorate published every two months. The Committee also notes with **interest**

the comprehensive information in Estonian, Russian and English on the website of the labour inspectorate, including the texts of relevant laws in their current versions and a database of best practices on the work environment. It also observed that the majority of infringements detected during inspection visits in 2011 in the area of occupational safety and health (OSH) concerned the lack of safety instructions on work and work equipment or the lack of, or insufficient risk assessment by employers, and that an analysis of accidents at work shows that the majority of work accidents involve workers who have worked for less than a year which is assumed to be a result of insufficient instruction and training. In this context, the Committee particularly notes the launching of a prevention campaign on the reduction of work-related health risks (personal protective equipment) in 2011, as well as the publication of the following: “Personal protective equipment: A tedious obligation or happy future?”; “Slips and trips: How to prevent work accidents”; and “Training and instruction of workers at workplaces”. ***The Committee asks the Government to continue to provide information on the preventive measures carried out by the labour inspectorate. In particular, please provide information on measures taken to address areas where shortcomings have been detected previously or which have been identified as the cause of cases of occupational diseases or industrial accidents (awareness raising among employers about the importance of providing adequate safety instructions to workers, information and instructions about the conducting of adequate risk assessments, etc.).***

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

## Ghana

### ***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:

*Article 12(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(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.*

## Greece

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)**

The Committee takes note of the Government's reports dated 31 August and 22 October 2012, the first of which also contains the Government's reply to the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in a communication dated 28 July 2011.

*Articles 1, 3, 4, 5, 6, 7, 10 and 11 of the Convention. ILO technical assistance for the reinforcement of the labour inspection system.* In its previous comments, the Committee notes the findings of the ILO high-level mission which visited the country in September 2011, and emphasized the crucial role of the labour inspection function in times of crisis in ensuring that workers' rights are respected, so that the crisis does not serve as a pretext for lowering labour standards. The Committee noted with *interest* that following its previous comments, the Government availed itself of ILO technical assistance in the area of labour inspection and that, in this framework, two technical missions visited the country in September and October 2012, so as to carry out a needs assessment of the Greek Labour Inspectorate (SEPE). The objective of strengthening the labour inspection system was part of the first Memorandum of Understanding between the Greek Government and the "Troika" (International Monetary Fund (IMF), European Commission (EC), European Central Bank (ECB)) concluded in May 2010 and incorporated in Act No. 3845/2010. Moreover, as indicated in the Government's report, the carrying out of an independent assessment of the SEPE was one of the commitments in the second Memorandum of Understanding of February 2012 which was enacted into law by Act No. 4042/2012.

In this context, the Committee notes with *interest* that the ILO missions which visited Greece benefited from the collaboration of the EC Task Force for Greece. It also notes with *interest* that, as observed by the two missions that visited the country and indicated by the Government in its report under the Labour Administration Convention, 1978 (No. 150), an IT project has been launched in order to electronically link all SEPE offices, and a database linking the SEPE with the Manpower Employment Organization (OAED) and the Social Insurance Institute (IKA) has been set up in the framework of collaboration with the European Union (EU), in order to simplify administrative procedures and enhance the effectiveness of the SEPE's actions.

The Committee also notes, however, that in its report under Convention No. 150, the Government refers to drastic budgetary adjustments in the SEPE which have resulted in a sweeping reduction of the material means and incentives previously available for conducting of inspections, especially in the regions. With reference to the findings of the ILO high-level mission of September 2011, the Committee once again draws attention to the need to strengthen the governance of the labour inspection system, build capacities and ensure sufficient resources and means of action if the labour inspection system is to achieve the economic and social goals assigned to this public function. *The Committee requests the Government to keep the ILO informed of the measures taken on the basis of the findings and recommendations of the ILO needs assessment, once available, and their impact on strengthening the labour inspection system and its coordination, ensuring sufficient human and material resources and realizing the primary objective of the Convention according to Article 3(1), which is the enforcement of legal provisions concerning the conditions of work and the protection of workers while engaged in their work.*

*Articles 3, 5(a), 17 and 18. Functions entrusted to the labour inspectorate, cooperation with other bodies and enforcement of sufficiently dissuasive sanctions. Control of undeclared work.* The Committee notes that in its comments of July 2011, the GSEE referred to a staggering increase in non-standard forms of work (part-time and reduced time rotation work contracts), widespread precariousness in the labour market, and a considerable volume of unregistered work as a result of the dismantling of the industrial relations framework and employment protection legislation. As indicated by the GSEE, in a context of steadily increasing unemployment, these trends rendered jobseekers all the more vulnerable. According to the GSEE, in 2011, after the first year of the implementation of the programme associated with the international loan mechanism for the Greek economy, labour relations in Greece had qualitatively and quantitatively regressed by two decades, a fact which increased fears that the situation was out of control with harmful consequences to workers, especially women and youth, that might well be irreversible.

The Committee recalls that the high-level mission of September 2011 emphasized among other things that the high incidence of undeclared work – which was indeed alarming – raised questions as to the governance of the entire labour market and clearly needed to be addressed by the labour inspection system, with priority placed on wage payment and non-discrimination. The Committee also recalls from its previous comments that in this context, Act No. 3996/2011 (in

combination with Act No. 3655/2010) entrusted the SEPE with additional functions, some of which had been previously carried out by social security inspectors, such as the control of undeclared work, as well as the control of the legality of the employment of foreign workers originating in EU and non-EU countries (third countries).

In its report the Government indicates that since the beginning of 2010, regular inspections have been conducted by joint teams of the SEPE and the Special Insurance Inspection Service of the IKA to control undeclared work. During 2011 (after the adoption of Act No. 3899/2010), these joint teams conducted 20,246 inspections in companies that account for 2.5 per cent of the total number of businesses in the country. The number of workers in the companies checked was 66,615 and the number of undeclared workers found was 19,968. The Government also provides some aggregate data on the inspection activities of the SEPE for the year 2011, according to which 31,515 inspections had been conducted by the Industrial (labour) Relations Service and 3,738 fines had been imposed amounting to a total of €10,937,418. Another 28,150 inspection visits had been carried out by the occupational health and safety service, and 590 fines had been imposed amounting to €1,704,111. The Committee understands from these data that a large proportion of the activities of the SEPE, notably its Industrial Relations Service, focused on the control of undeclared work. With reference to paragraph 77 of its 2006 General Survey on labour inspection, the Committee notes 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 the primary duty of labour inspectors is to ensure the enforcement of legal provisions relating to conditions of work (e.g. wages, hours of work, occupational safety and health) and the protection of workers (e.g. equality and non-discrimination, freedom of association, eradication of forced labour and child labour). ***Noting that the annual report of the SEPE for 2011 is not yet available, the Committee once again requests the Government to provide in its next report detailed information on the activities carried out by the SEPE in the framework of the implementation of Act No. 3996/2011 and their results (number of workplaces inspected, violations found, legal provisions concerned, advice provided and sanctions imposed) as well as the impact of these activities on reducing undeclared work and regularizing the situation of workers concerned.***

***Measures to ensure the payment of wages and benefits.*** The Committee also notes from the 2010 annual report of the SEPE, that over half of workers' complaints concerned the non-payment of wages. In its previous comments, the Committee welcomed certain measures introduced by Acts Nos 3996/2011 and 3863/2010 such as the labour stamp and the obligation to pay wages electronically via bank accounts, which can be an effective guarantee of the payment of wages and social security contributions and be of great help in reducing the incidence of undeclared work and illegal employment. It recalls, however, from the report of the high-level mission of September 2011 that, at the time, the two measures had not yet produced any results. There was need for awareness raising on the labour stamp to promote its use, while the ministerial decision for the entry into force of the electronic payment of wages had not yet been issued.

In its latest report, the Government does not provide information on steps taken to promote the use of the labour stamp which it describes as a simple and easy way for employers to be fully protected against any complaint of illegal employment and the employees to safeguard their pension and health care rights. It also does not make any reference to measures for the introduction of the electronic payment of wages. ***The Committee reiterates its request for the Government to take necessary awareness-raising measures to promote the use of the labour stamp, as well as the necessary legal and practical steps for the implementation of the electronic system for the payment of wages (including the issuance of a ministerial decision for the entry into force of the relevant provisions of Act No. 3863/2010), and to keep the Office informed of progress made in this regard.***

***Positive incentives to encourage compliance.*** In its previous comments, the Committee took note of financial incentives introduced by section 24 of Act No. 3996/2011 (e.g. 80 per cent reduction of fines imposed) to persuade employers to discharge in a timely manner their obligations for the payment of outstanding wages and benefits due to workers. The Government indicates that this provision constitutes an innovation aimed at enabling the labour inspectorate to take immediate enforcement measures (imposition of sanctions for infringements of the labour law) and make reductions in certain cases (30 per cent reduction in case of immediate payment of the fine and 80 per cent reduction in case of the employer's compliance). However, in order for this provision to enter into force, additional measures have been necessary in collaboration with the Ministry of Finance, like the issuance of a Revenue Code Number which was only introduced in 2012 by Circular 20585/25-01-2012 of the SEPE Directorate of Administrative and Technical Support. As a result, there are no data on the implementation results of this provision for the year 2011. ***The Committee once again requests the Government to indicate the impact of section 25 of Act No. 3996/2011, now that administrative measures have been taken for its entry into force, in relation to the level of compliance with legal provisions on conditions of work and the protection of workers, including wage payment and the regularization of the situation of undeclared workers.***

***Control of legality of employment of migrant workers.*** In its previous comments, the Committee noted that according to section 2(2)(a)(iv) of Act No. 3996, the SEPE is entrusted with the control of the legality of the employment of third country nationals and that section 2(2)(b) of the Act authorizes the SEPE to investigate, discover, identify and prosecute, in parallel and independently from other authorities and organizations, those who violate the provisions that are supervised by the SEPE. In its report, the Government indicates that in 2011, out of 19,968 workers who were found to be undeclared, 8,147 were foreign nationals, accounting for 39.49 per cent of the total number of foreign workers found

during inspections in the companies checked (20,632 out of 66,615). The Government does not indicate how many of these foreign workers were nationals of third countries.

The Government also indicates that the primary objective of labour inspectors is to protect the labour rights of the said group of workers and adds that Act No. 4052/2012 on “Sanctions and Measures Against Employers of Illegally Staying Third Country Nationals in order to Combat Illegal Immigration” was adopted in 2012 in order to harmonize Greek legislation with EU Directive 2009/52/EC. This Act prohibits the employment of illegally staying third country nationals and entrusts labour inspectors with: (i) keeping records of employers against whom an administrative sanction has been imposed for infringing the prohibition of employing illegally staying third country nationals, keeping track of relevant judicial decisions and issuing relevant certificates; (ii) conducting regular and extraordinary inspections by sector of activity based on relevant risk assessments, in order to control the employment of illegally staying third country nationals; and (iii) notifying the Minister of Labour and Social Security of inspections conducted during the previous year as well as of their outcomes both in absolute figures and as a percentage of the employers for each sector (sections 79(1) and 90 of Act No. 4052/2012).

The Government explains that until recently, the SEPE acted in the same manner as regards foreign nationals who were illegally staying in the country and those who were legally staying but had no permit to work (e.g. cases of family reunification), by informing the regional authorities so that they might impose legal sanctions on employers (pecuniary fine and/or closure of business). Following the recent amendment of section 86 of Act No. 3386/2005 by section 14 of Act No. 3846 of 2010, and in accordance with the provisions of section 85 of Act No. 4052/2012, when the SEPE inspectors find evidence of illegal employment of foreign nationals from third countries, they themselves impose fines on employers. The Government does not specify whether labour inspectors continue to notify the regional authorities about their findings. The Government indicates that the functions of controlling irregular employment are to be exercised both together with and independently from the police but does not specify whether labour inspectors actually take part in any joint operations with the police or have any direct or indirect involvement in return procedures for workers who are illegally staying nationals of third countries.

The Committee once again recalls from paragraph 78 of its 2006 General Survey on labour inspection that any association of the labour inspectorate with the police and immigration authorities to target irregular workers 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 and that efforts to control the use of migrant workers in an irregular situation require the mobilization of considerable resources in terms of staff, time and material resources, which inspectorates can only provide to the detriment of their primary duties.

The Committee also recalls from paragraph 78 of its General Survey that, while usually only employers are to be held accountable for illegal employment as such, with the workers involved being seen in principle as victims, where the workers concerned are foreigners residing illegally in the country, they are doubly penalized in that, in addition to losing their job they face the threat of expulsion, if not actual expulsion. Nonetheless, the fact that labour inspection in general has the power to enter establishments without prior authorization allows it more easily than other institutions to put an end to abusive working conditions of which foreign workers in an irregular situation are often the victim, and to ensure that workers benefit from recognized rights. In these circumstances, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all workers if it is to be compatible with the objective of labour inspection. This objective can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and protection of workers and not immigration law.

In this regard, the Committee notes with *interest* that Act No. 4052/2012 envisages penal sanctions for employers guilty of persistent infringements in respect of the simultaneous employment of a significant number of illegally staying third country nationals accompanied by particularly exploitative working conditions, including of minors (sections 87 and 88) and that a residence permit for humanitarian reasons may be provided to the victims of such practices (section 89). It also, notes however, that the penal sanctions introduced for such acts do not appear to be sufficiently dissuasive (minimum of five months’ imprisonment or minimum of six months where the victims are children).

***The Committee requests the Government to specify the sanctions imposed by the courts on employers found to be guilty of particularly exploitative working conditions including of minors and to communicate the texts of relevant court decisions. It also requests the Government to indicate any steps taken to revise sections 87 and 88 of Act No. 4052/2012 so as to ensure that the minimum sanctions applicable for such acts are sufficiently dissuasive. The Committee requests the Government to provide detailed information on the activities carried out by the SEPE in the framework of the implementation of Acts Nos 3996/2011 and 4052/2012, and to furnish data on the impact of these activities on the punishment of employers guilty of trafficking and other forms of exploitation and on the payment of outstanding wages and benefits due to workers who are illegally staying nationals of third countries, including where they are liable to expulsion or after they have been expelled.***

***The Committee requests the Government to specify the role of labour inspectors in detecting infringements and in recommending or facilitating the filing of complaints and the institution of criminal proceedings vis-à-vis employers so as to extend further the protection of the statutory rights of workers in an undocumented situation and to ensure that***

*workers who are illegally staying nationals of third countries have effective access to the justice system, and to provide data and examples of decisions rendered in this regard.*

*The Committee requests the Government to specify whether labour inspectors are associated in any police and/or immigration operations in the framework of combating illegal immigration and whether they have any direct or indirect involvement in expulsion procedures of workers who are illegally staying nationals of third countries. If that is the case, the Committee once again requests the Government to take measures so as to progressively dissociate the functions of enforcing immigration law (legality of employment of third country nationals) from those of supervising the observance of workers' rights (e.g. protection of fundamental rights at work and payment of wages and statutory benefits) which constitute their primary duties under Article 3(1) of the Convention, and to keep the Office informed of progress made in this regard.*

*Implementation of the principle of equal opportunity and treatment for men and women at work.* The Committee notes from the Government's report that the SEPE contributes to the greatest extent possible to the increase in women's participation in employment and, as such, constitutes one of the key guardians and promoters of the principle of equal treatment in employment and occupation. The Government provides data which show a marked increase in the number of discrimination cases referred to the Ombudsman from 16 cases in 2011 to 21 in the first half of 2012. It also indicates however, that although Act No. 3488/2006 establishes institutionalized cooperation between the SEPE and the Ombudsman, the practical aspects of this cooperation have not been standardized through circulars or instructions, leading to confusion and a need to clarify the new competencies and roles.

The Committee also notes from the 2011 report of the Greek Ombudsman, that even though collaboration with the SEPE has been positively assessed, room for progress exists in some areas so as to address: (i) the occasional transfer of files to the Ombudsman only after a meeting has taken place at the SEPE for the resolution of the dispute, which may restrict the margin of intervention by the Ombudsman; (ii) the occasional lack of notification to the Ombudsman of the final outcome of a case especially when it has recommended that a fine be imposed; (iii) the occasional practice of limiting labour inspectors' roles to taking note of the parties' opinions and recommending that they take their dispute to court without making any finding as to labour law violations; and (iv) the limited role of labour inspectors in sexual harassment cases where they usually avoid taking any position or action, and simply take note of the parties' views before transferring the case to the Ombudsman.

*Noting that according to the high-level mission report, priority attention should be placed on equality and non-discrimination in the current context of the labour market, the Committee requests the Government to indicate any measures taken or envisaged by the SEPE central authority in order to strengthen the cooperation with the Ombudsman in the area of non-discrimination, such as through the issuance of circulars delineating roles and responsibilities and enhancing cooperation, as well as through training made available to labour inspectors, as previously suggested by the Ombudsman, so as to increase awareness of relatively new concepts concerning discrimination. Furthermore, the Committee would be grateful if the Government would indicate any steps taken, including training of labour inspectors on investigation methods, to strengthen protection against sexual harassment.*

The Committee also notes that according to the Government, in matters relating to disabled employees, the labour inspectors may cooperate on a case-by-case basis with experts appointed by the National Federation for the Disabled. *The Committee requests the Government to provide additional information on the activities of the SEPE on matters relating to workers with disabilities, including cooperation with experts and training, and to indicate their impact on ensuring equality of opportunity and treatment for this category of workers.*

*Conciliation functions entrusted to labour inspectors.* The Government indicates that Act No. 3899/2011 added the functions of an "Industrial Relations Conciliator" to those of Industrial Relations Inspectors. According to section 4 of Act No. 3996/2011, the Conciliator is a labour inspector with increased qualifications serving at the Industrial Relations Inspection Department where the application for conciliation is submitted. According to the Government, the Industrial Relations Conciliators perform their duties in a fully independent manner with objectivity and impartiality, at local, regional or national level. The Government adds that in 2011, 21,345 labour disputes were treated, 9,843 of which were resolved and €19,875,087 were paid to workers, thereby ensuring, to a large extent, the payment of accrued wages and the protection of labour rights.

The Committee recalls from its previous comments, that by virtue of Act No. 3899/2010, the scope of unilateral recourse to arbitration of collective disputes was limited to the issue of wages, leading to an increased need for conciliation of collective labour disputes on non-wage matters – a task now entrusted to the labour inspection system by Act No. 3996/2011. It also recalls that, according to section 3(7) and (9) of this Act, the conciliator (of both individual and collective disputes) should aim on the one hand, at ensuring the strict implementation of the applicable legislation and, on the other hand, at bringing the views of the parties closer together, by proposing solutions for reaching an agreement which the parties can accept, so as to ensure a quick resolution of disputes and industrial peace in the best interest of employers and workers.

The Committee once again refers to paragraphs 72–74 of its 2006 General Survey on labour inspection which emphasize the importance of avoiding overburdening inspectorates with tasks, which by their nature may be understood as being incompatible with their primary function of enforcing legal provisions. It recalls that the time and energy that

inspectors spend on seeking solutions to collective labour disputes is often at the expense of their primary duties and that carrying out supervisory functions more consistently would lead to better enforcement of the legislation and hence a lower incidence of labour disputes. ***The Committee therefore once again requests the Government to take the necessary measures to ensure that the functions of conciliation are separated from those of inspection and entrusted to a distinct body. It would be grateful if the Government would provide information on any progress made to this end and, in the meantime, to indicate the number of labour inspectors who carry out the advisory and enforcement functions provided in Article 3(1)(a)–(b) of the Convention, and those who carry out conciliation functions.***

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 2013.]***

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1985)**

The Committee takes note of the Government's report dated November 2011, which was received in the Office on 23 February 2012 and contained a reply to the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in a communication dated 28 July 2011. It also notes the Government's report dated 31 August 2012.

***Articles 1 and 2 of the Convention. Abolition of the Workers' Housing Organization (OEK) and the Workers' Social Fund (OEE) in the framework of austerity measures.*** The Committee notes that according to the Government's report of 31 August 2012, the OEK and OEE, which are described by the Government as public bodies corporate under the supervision of the Ministry of Labour and Social Security, were abolished and their competences transferred to the Manpower Employment Organization (OAED) by virtue of Act No. 4024/2012 and Ministerial Cabinet Decree No. 7/28-2-2012. The Committee recalls that the OEK and OEE were managed by tripartite boards on the basis of Acts Nos 2091 of 1992 and 2224 of 1994, which had been adopted following long-standing comments by the supervisory bodies under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), (Conference Committee on the Application of Standards, June 1995). In this regard, the Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association at its 365th Session (November 2012) in Case No. 2820 concerning Greece. It notes from this case that according to the GSEE, these bodies were crucial to trade union social work and funding workers' housing and that they provided an indispensable social function (e.g., nurseries, summer camps for children, social tourism for low-income workers during the low season, cultural activities including subsidized tickets for theatres, sports, libraries) which did not burden the state budget, being financed exclusively from employers' and workers' contributions. One of the functions of the OEE was to secure minimum financing for trade unions in order to support their operating needs; it has also been the main source of financing for the Organization for Mediation and Arbitration (OMED), enabling it to preserve its autonomy vis-à-vis the State to provide independent mediation and arbitration services for the resolution of collective labour disputes. The Committee refers to its comments under Convention No. 87 on this question. ***It also requests the Government to indicate, in its report under this Convention, any measure taken or envisaged to ensure the continuation of OEK and OEE projects under the auspices of the OAED, the changes made to the governance structure of these organizations, and whether and how the assets of the OEK and OEE have been distributed.***

***Articles 4, 5, 6, 9 and 10. Coordination of the system of labour administration in consultation with employers' and workers' organizations and resources at the disposal of labour administration staff.*** In its comments of 2011, the GSEE described a stifling economic environment in the labour market generated through unilateral legislative interventions which resulted in wage freezes and continuous erosion of workers' income, redundancies and widespread precariousness. The GSEE referred to unprecedented unemployment levels (which in the meantime reached 25.1 per cent in July 2012 according to Eurostat, from 10.2 per cent in December 2009), which in turn deprived social security funds of vital resources thus making their future viability uncertain and leading to the withering of social dialogue into a summary and superficial procedure.

In its report received in February 2012, the Government refers to extensive budgetary cuts in the Ministry of Labour and Social Security which raise obstacles to the fulfilment of its mission and the proper functioning of its services. The Government also refers to the adoption of Act No. 4024/2011 on "Regulations concerning pensions, unified pay scale and grading system, labour reserve and other provisions for the implementation of the medium-term fiscal strategy framework 2012–15" which, according to the Government, attempts to restructure the system of matching activities with human resources and to connect such a system with a system of incentives related to career and pay in the public administration. The Government indicates that within the framework of Act No. 4024/2011, mainly section 35, a restructuring of the Central Service of the Ministry of Labour and Social Security and the OAED, which is the main social policy actor in the field of employment, is fully under way in an attempt to reduce the Ministry's services by 30 per cent in order to satisfy the need to restructure and modernize the units of the Ministry of Labour and Social Security, improve its structure and operation and serve the citizens' true needs. For this reason, a Restructuring Committee was established within the Ministry of Labour and Social Security in order to do a mapping of the existing organizational structure and needs in personnel and to identify the service units which are devoid of object or which have a clearly limited object. On the basis of the findings, a redeployment of classified posts by category and field is being undertaken in order to transfer staff with specific skills to service units that need to be reinforced. According to the Government, Act No. 4024/2011 also provides

for automatic dismissals, pre-retirement suspension of permanent public officials and the measure of the “labour reserve” for workers in the public sector under a private law contract (i.e., these workers will be paid 60 per cent of their basic salary without working for 12 months after which they will be dismissed). According to the Government, these measures deprive the public administration, including the labour administration, of capable and experienced personnel with know-how. According to the Government, new administrative needs are likely to arise from such dismissals and in combination with the freeze on public sector recruitment introduced by sections 10 and 11 of Act No. 3833/2010 and section 37(37) of Act No. 3986/2011, there will be consequences on the proper delivery of services to the citizens.

In its report of 31 August 2012, sent after the national elections of May and June 2012, the Government indicates that its primary choice is a new model for the organization and functioning of the State and of public administration with a view to providing the country with a rationally organized, functional and efficient administrative system that will serve the public interest, ensure social cohesion, simplify the decision-making process and provide, inter alia, upgraded services to citizens and businesses. Within this framework and in application of section 35 of Act No. 4024/2011, the Ministry of Labour participated (through the preparation of legislative provisions) in the drafting of the Bill on the “Reorganization of Ministries and Public Bodies Corporate” which is to be introduced in Parliament by the Ministry of Administrative Reform and E-Governance. This Bill aims at reorganizing and substantially modernizing the public administration, including the Ministry of Labour and Social Security, in order to achieve effective and rational organizational structures to the benefit of citizens and businesses. The ultimate goal of this effort is to strengthen the administrative capacity of the Ministry’s units in order to better serve citizens, by providing better quality services and increasing satisfaction levels and confidence in the administration. Furthermore, the best use of available resources and especially of human resources is one of the expected results.

The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2820 concerning Greece, according to which it is of critical importance, given the massive impact that measures like restructuring programmes, successive wage cuts and the labour reserve in the public sector can have, that the Government now engage in constructive dialogue with the social partners to consider appropriate steps for mitigating the consequences of these measures on their employment and working conditions and planning the occupational future of these workers in the light of the country’s opportunities [document GB. 316/INS/9/1, November 2012, paragraph 991]. The Committee refers to its comments under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in this regard.

The Committee notes that according to *Article 10* of the Convention, the staff of the labour administration system should have the status, the material means and the financial resources necessary for the effective performance of their duties. While being fully aware of the difficulties the country is currently facing, the Committee wishes to underline that sufficient resources for the labour administration system are important in conditions of austerity, unprecedented unemployment and mounting poverty which place increasing pressure on this system. It recalls from the conclusions on labour administration reached by the International Labour Conference at its 100th Session (2011) that experience from the recent financial and economic crisis has shown that labour administration has an essential role among government institutions, as good labour policies and efficient institutions can help to address difficult economic situations, by protecting workers and enterprises against the worst impact of an economic crisis and mitigating its economic and social consequences while facilitating economic recovery [paragraph 3 of the conclusions, *Provisional Record* No. 19, page 89].

***The Committee requests the Government to provide detailed information on the impact of the current restructuring of the labour administration system on the effective performance of its functions and the number, status and conditions of its staff as well as on any steps taken to ensure that this restructuring is carried out in consultation with the organizations representing the workers in the labour administration, so as to mitigate any adverse consequences of austerity measures on their employment and working conditions and plan, to the extent possible, their occupational future in the light of the country’s opportunities.***

***Furthermore, recalling from its previous comments the need to ensure close coordination of policies pursued in parallel to the framework of structural reforms in the areas, for example, of collective bargaining, wages, social security and employment, the Committee once again urges the Government to indicate the steps taken to ensure an effective coordination of the functions and responsibilities of the system of labour administration in order to address as effectively as possible the grave circumstances with which the country is currently faced.***

*Article 10(1). Qualifications and training of the staff of the labour administration system.* In its previous comments, the Committee noted the need to build capacities in the area of operational programmes under the European Social Fund (ESF) so that they can be managed in a results-based manner, taking into account that 50 per cent of these funds are devoted to human resource development and another major portion to education and lifelong learning. In its report, the Government indicates that the design of all ESF operational programmes contains monitoring and assessment indicators, a significant proportion of which is based on results. Operational assessments for ESF operational programmes managed by the Ministry are ongoing. ***The Committee requests the Government to communicate the results obtained through these operational programmes and the outcomes of their assessments once they are available along with information on any steps taken in order to address potential areas for improvement, including through training.***

***[The Government is asked to reply in detail to the present comments in 2013.]***



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### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)**

*Articles 1, 3, 4, 7, 10 and 11 of the Convention. Functioning of the labour inspectorate and available means of action.* The Committee recalls that since 2005 it has expressed concern at the persistent inadequacy of the means of action available to the labour inspection service. It notes with *interest* that in the first report it has sent since 2006, the Government indicates that 80 new officials have been assigned to the labour inspectorate, and seeks support from the ILO to devise a programme of training for labour controllers and inspectors to provide the new officials with the requisite qualifications. The Committee nonetheless notes with *concern* that, according to the Government, the means of action available to the labour inspectorate – apart from a four-wheel drive vehicle made available to the General Labour Inspector – are scarce owing to the austerity plan the country has adopted. The Committee observes that, consequently, only 11 technical inspection visits for occupational safety and health were conducted in 2011. However, inspectors appear to devote much of their time to tasks that go beyond their main duties, such as dispute settlement, supervision of union elections, the negotiation of social claims, study of the internal rules of enterprises and job classifications. The Committee concludes from this that there is no real distinction between labour inspection and labour administration. It further notes with *concern* from the Government's report on Labour Administration Convention, 1978 (No. 150) that, according to an inquiry conducted by the National Committee against Corruption and for Economic and Financial Accountability (CNLC) in 2004, the General Labour Inspectorate is cited as one of the least effective public services. The Committee also notes from the Government's report on Convention No. 150 that the Government requested assistance from the ILO for a study on the organization and functioning of the Ministry of Labour and the Public Service with a view to regrouping the labour administration services into a single department and building their capacity, and that the study was to be validated in the first quarter of 2012. The Committee hopes that the study will afford an opportunity to draw a clear distinction between the functions of the labour administration system and those of the labour inspectorate more particularly. In this regard, the Committee notes the Government's statement that it plans to make the necessary arrangements to provide the labour inspectorate with more resources to enable it to operate effectively, and that it will keep the ILO informed as soon as conditions allow.

*The Committee urges the Government to take the necessary steps to reinforce the resources, functioning and coordination of the labour inspection system to enable it to meet the requirements of the Convention. It asks the Government to provide information on the measures taken gradually to relieve labour inspectors of duties other than the labour inspection duties set out in Article 3(1) of the Convention, namely the enforcement of the legal provisions relating to conditions of work and the protection of workers. It also invites the Government to make a formal request to the ILO for technical assistance in training new inspectors and to extend its request to cover support in seeking the necessary sources in the context of international cooperation to provide the labour inspectorate with the material means it needs to perform its duties, including transport facilities suited to conditions in the country. It asks the Government to provide information in its next report on the measures taken or envisaged to these ends.*

*Articles 5, 20 and 21. Annual inspection report.* The Committee notes with *concern*, that despite its repeated requests, the Government has not sent a labour inspection report since the one for the period from October 1994 to October 1995. The Government's last report under article 22 of the ILO Constitution provides only scant information on the activities of the labour inspectorate. The Committee recalls its general observation of 2010, in which it stressed the importance it attaches to the publication and communication to the ILO of an annual inspection report, as an essential basis for evaluating in practice the activities of the labour inspection services and, subsequently, determining the means necessary to improve their effectiveness. Furthermore, referring to its general observation of 2009, the Committee recalls that a regularly updated register of enterprises 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 periodical 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's supervisory bodies of the progress made and the shortcomings of the labour inspection system so that they can provide their opinions for improvement.

*The Committee accordingly urges the Government to encourage, as required by Article 5(a) of the Convention, 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 register entries indicating at least their geographical location, the branch of activity, the number and categories of workers employed there and their distribution by gender. It expresses the hope that such measures will be taken in the near future so that an annual report on inspection activities containing the information required by each subparagraph from (a) to (g) of Article 21 can be produced and published by the central labour inspection authority.*

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1982)**

*Article 10 of the Convention. Functioning of the labour administration system.* The Committee notes the information supplied by the Government to the effect that the labour administration system is difficult to assess because its functions are shared among several ministerial departments. The Committee notes with **concern** the findings of a survey carried out in 2004 by the National Committee against Corruption and for Economic and Financial Accountability (CNLC), in conjunction with the World Bank, the Users' Committee and Stat View International (SVI) provided by the Government. According to a summary of the abovementioned survey as regards governance, the misuse of public funds and corruption in the public sector seem to be the main problems facing the country. The survey indicates that only three ministerial departments, and the Ministry of Labour is not among them, are deemed to be effective. As regards recruitment in the public administration, the report points out that vacancies are not always filled by the best qualified candidates.

In this context, the Committee notes with **interest** the information that the Government has applied to the ILO for assistance to carry out a study on the organization and running of the Ministry of Labour and the Public Service with a view to regrouping the labour administration services into a single department and building their capacities, and that the study was scheduled to be validated in the first quarter of 2012. **The Committee requests the Government to provide information on the formal steps taken to obtain assistance from the Office and on any progress made in reorganizing the system of labour administration and strengthening of its functions, coordination, staff and financial resources. Please also provide the Office with a copy of the final report of the CNLC containing the recommendations and indicate any follow-up measures in this connection.**

*[The Government is asked to report in detail in 2015.]*

## **Guinea-Bissau**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1977)**

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 takes note of the comments on the application of the Convention by the National Union of Workers of Guinea (UNTG-CS), sent with the Government's report.

*Articles 3, 7, 10, 11 and 16 of the Convention. Comments by workers' organizations.* The UNTG-CS considers that it is necessary to build the financial, technical and material capacity of the inspection services so as to optimize the performance of their supervisory duties, and to reinforce the authority of the courts so that they in turn are in a position to ensure that the provisions are better applied.

The Government indicates that the General Labour Inspectorate (IGT) is having serious difficulty in carrying out its functions: (1) the numbers of inspectors are too low; (2) their facilities are cramped and are therefore an impediment to the confidentiality needed for the proper discharge of the inspectors' duties; and (3) only one vehicle is available, so inspectors lack the mobility they need to meet the demands of the labour market.

The Committee also notes that, according to the Government's report, the IGT consists of 16 inspectors and provides conciliation services for employers and workers for the settlement of disputes. The Committee is bound to stress in this connection that the main role of the labour inspectorate is to enforce the legal provisions on conditions of work and the protection of workers. It also points out that according to *Article 3(2)* of the Convention, if duties other than those set in this provision are entrusted to labour inspectors, they 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, the Committee draws the Government's attention to the obligations laid down in *Articles 7 and 11* of the Convention under which the competent authority shall make the necessary arrangements to furnish labour inspectors with adequate training for the performance of their duties, offices suitably equipped in accordance with the requirements of the service and accessible to all persons concerned, and the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist, and to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties. **The Committee therefore asks the Government to take measures to ensure that the primary duties of labour inspectors pertain to the supervisory functions set forth in Article 3(1) of the Convention; and to ensure that measures are promptly taken to provide labour inspectors with adequate financial and material resources to cover their needs, including training, so that they may discharge their functions effectively. The Committee would be grateful if the Government would inform the Office of any such measures to this end, including in the context of international cooperation, and to point out any difficulties encountered.** The Committee reminds the Government that it may avail itself of the technical assistance of the Office should it so wish.

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**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1966)**

*Articles 20 and 21 of the Convention. Communication and content of the annual inspection report.* The Committee notes with **regret** that the last annual report of the Industrial Relations Department of the Ministry of Labour, Human Services and Social Security was received in 2006 and concerned the year 2004. It notes moreover with **regret** that

the Government has still not provided a reply to the Committee's comments on this report made in 2007, and repeated in 2008, 2009, 2010 and 2011. The Committee is therefore bound to repeat its previous comments, which read as follows:

The Committee notes the communication, within the time limits prescribed by *Article 20*, of the annual report for 2004 of the Industrial Relations Department of the Ministry of Labour. However, it notes once again that information such as the number of industrial and commercial workplaces liable to inspection and the number of workers employed therein (*Article 21(c)*), which is essential for evaluating the extent to which the Convention is applied, is not always available. In addition, statistics of industrial accidents and cases of occupational disease (*Article 21(f)* and (*g*)) have never been provided, which makes it impossible to assess the work of the labour inspectorate in the area of occupational safety and health. **The Committee strongly hopes that the Government will not fail to take the necessary measures quickly, in particular by calling for the cooperation of other competent public and private institutions, in particular the tax services, to establish a register of workplaces liable to inspection to enable each inspection service to plan its interventions with a view to prevention, while continuing to respond to specific requests.**

**The Committee would be grateful if the Government would also take measures to ensure that, in accordance with Article 14 of the Convention, labour inspectors are notified of industrial accidents and cases of occupational disease so that, on the one hand, they are in a position to identify the occupational risks inherent in the various activities carried out in the workplaces liable to inspection and to take appropriate preventive action and, on the other, that they are able in turn to provide relevant information to the central inspection authority for the purposes set out in the Convention.**

**Finally, the Committee invites the Government to draw the attention of the central labour inspection authority to the valuable guidance provided in Part IV of Recommendation No. 81 on the manner in which the information required by Article 21 could be presented in order to reflect usefully the labour inspectorate's work in practice.**

**The Committee recalls moreover that the obligation to provide an annual report on the work of the inspection services under Article 20 of the Convention is an ongoing one and requests the Government to publish such a report and communicate it to the ILO within the time limits set in paragraphs 2 and 3 of this Article.**

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

### **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.**

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1983)**

The Committee notes that the Government's report does not contain a reply to its previous comments concerning the functions of the tripartite Committee chaired by the Minister of Labour, made in 2007 and repeated in 2009, 2010 and 2011. It is therefore bound to repeat its previous comments which read as follows:

*Article 5. Functions of the tripartite Committee.* In the Committee's previous request, the Government was asked to indicate the functions of the tripartite committee chaired by the Minister of Labour, as well as those of the six subcommittees to which it referred in its 1999 report. The Government states in reply that this question was dealt with comprehensively under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). While the Committee has not found the information requested in the Government's report, it wishes nevertheless to emphasize that the tripartite consultations referred to in that instrument are distinguished clearly by virtue of their purpose – activities of the International Labour Organization – from the tripartite consultations referred to in *Article 5 of this Convention*, which concern the various areas of national labour policy. ***The Committee therefore once again requests the Government to indicate the functions of the tripartite committee chaired by the Minister of Labour, as well as those of the subcommittees referred to in its report received in 1999, and to report to the Office any other arrangements made, at the national, regional and local levels, to ensure the consultation, cooperation and negotiation provided for by Article 5. It would be grateful if the Government would also provide copies of any reports or extracts of reports relating to the work of these various tripartite bodies, their purpose and their 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 and reminds the Government that it may avail itself of ILO technical assistance, if it so wishes.***

## **Haiti**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)**

*Offer of technical assistance.* The Committee notes the Government's report, which focuses on the priorities established in the context of the efforts to revive the country following to the earthquake of January 2010, including through the promotion of employment, particularly in the construction sector, and on the obstacles encountered in the application of Convention No. 81.

The Committee further notes the observations of 31 August 2011 from the International Trade Union Confederation (ITUC), according to which the abrupt deterioration in working conditions which followed the earthquake highlights the existence of increasingly precarious and even dangerous forms of work, including for young children, and underlines the urgent need for a sound employment policy which focuses on strengthening labour inspection services in the capital and the provinces, including in the construction sector, which is likely to be the main source of jobs in the years to come.

***Aware of the difficulties faced by the Government and the efforts which the latter must make to create the necessary conditions for application of the Convention, the Committee reminds the Government that it may avail itself of technical assistance from the ILO if it so wishes, including support for seeking the necessary resources in the context of international cooperation with a view to the progressive establishment of a labour inspection system which meets the requirements of the Convention. The Committee requests the Government to provide information on any formal steps taken to this end.***

*Articles 3, 12, 13, 15, 16, 17 and 18 of the Convention. Discharge of primary duties of the labour inspectorate.* Further to the Committee's previous comments, the ITUC stresses the need to reform the Labour Code, especially section 411, which stipulates that labour inspectors shall provide employers and workers with technical information and advice "where necessary". The ITUC calls for full effect to be given to *Article 3(1)* of the Convention, despite the difficulties faced by the country. It refers to the information provided by the Confederation of Haitian Workers (CFOH), according to which labour inspectors have not produced any report since 1992 on any action taken and that they show a certain partiality with regard to enterprises, even where there are clear violations of workers' rights. The ITUC also underlines the importance of activities linked to the export processing zone in terms of jobs created, especially for young women.

The Committee notes the Government's proposal to modify the expression "where necessary" in section 411 as part of the revision of the Labour Code, which is due to take place with technical support from the ILO, with a view to harmonizing the Labour Code with the international labour Conventions ratified by Haiti. The Government also emphasizes that, despite the wording of section 411 of the Labour Code, inspections have been conducted regularly over the last three years in Port-au-Prince and certain departments of the country.

The Committee recalls that the role of the labour inspectorate must not be limited to reacting to requests from workers or employers, and that inspections of workplaces, whether scheduled or not, should be conducted as often and as thoroughly as necessary throughout the country (*Article 16*), in order to enable the labour inspectorate to discharge its primary duties, as provided for in *Article 3(1)*. The Committee notes that the effectiveness of the inspection system and the credibility of inspectors for employers and workers depends largely on the manner in which inspectors exercise their prerogatives (right to enter workplaces, direct or indirect powers of injunction, reporting infringements, initiating proceedings, etc.) and meet their obligations (such as displaying probity and observing confidentiality), as established by *Articles 3, 12, 13, 15, 17 and 18* of the Convention.

*The Committee requests the Government to keep the Office informed of any progress made regarding the revision of section 411 of the Labour Code, so that the provision of technical information and advice to employers and workers is recognized as a permanent function of the labour inspectorate in conformity with Article 3(1)(b).*

*The Committee also requests the Government to supply detailed information together with statistics on the planning and implementation of systematic inspections throughout the country, including in the export processing zones, and also their results (identification of infringements or irregularities, technical advice and information, observations, injunctions, notices of infringement, legal proceedings initiated or recommended, penalties imposed and enforced), and to indicate any obstacles to the full application in practice of the prerogatives and obligations of labour inspectors.*

*Finally, the Committee requests the Government to send a copy of the report form on violations and of some of such reports which have already been completed.*

*Article 6, 8, 10 and 11. Human and material resources available to the labour inspectorate.* The Government refers to the obstacles encountered in the application in practice of the Convention which, according to its report, are numerous: inadequate numbers of labour inspectors in view of the number, nature and size of workplaces liable to inspection and the complexity of the provisions of the Labour Code in force; lack of logistical resources; insufficient budget resources for paying reasonable salaries to labour inspectors; lack of mobile resources to facilitate the transportation of inspectors and enable them to fully perform their duties; premises inaccessible to certain persons (especially persons with disabilities).

According to the ITUC, the labour inspection services continue to lack the resources to be fully operational and show deficiencies in terms of supervision on the ground. According to the information supplied by the CFOH to the ITUC, as regards the total number of 100 serving labour inspectors, more than half (53 inspectors) are in a single department in the west of the country, while the numbers of inspectors in the other nine departments range from six to 20.

*The Committee requests the Government to supply detailed information on the measures taken or envisaged, including having recourse to international financial aid, to obtain the necessary funds to build the capacities of the labour inspection system, especially by increasing the number of labour inspectors and the material and logistical resources available to the labour inspectorate.*

The Committee also refers to paragraph 209 of its 2006 General Survey on labour inspection. While being fully aware of the problems faced by the Government, it is bound to emphasize the importance that it places on the treatment of labour inspectors in a way that reflects the importance and specific features of their duties and takes account of personal merit. *The Committee requests the Government to indicate all the measures taken or envisaged to improve the status and conditions of service of inspectors, so that they correspond to the conditions of public officials performing comparable tasks, such as tax inspectors.*

*Articles 5(a) and 21(e). Effective cooperation with other government departments and with employers' and workers' organizations.* The ITUC underlines the need to provide statistics that make it possible to assess any cooperation and procedures for such cooperation with other government departments and with employers' and workers' organizations. The Government, for its part, refers to cooperation between the labour inspectorate and other government departments, such as the National Office for Old-Age Insurance (ONA), the Office for Occupational Accident, Sickness and Maternity Insurance (OFATMA), the Office for the Protection of Citizens (OPC), and also civil society organizations for the defence of human rights. *The Committee requests the Government to provide details of this cooperation and its impact on the effectiveness of the action of the labour inspectorate, with a view to the application of the legal provisions relating to conditions of work and the protection of workers while engaged in their work.*

The Government also refers to cooperation between the labour inspectorate and the labour tribunal, to which files are referred for the imposition of penalties provided for by the law further to a report of non-compliance. The Committee recalls its general observation of 2007, in which it stressed the importance of measures enabling effective cooperation between the labour inspection system and the justice system, in order to encourage due diligence and attention in the treatment by judicial bodies of violations reported by labour inspectors, and in the disputes concerning the same fields which are submitted directly to them by workers or their organizations. *The Committee requests the Government to provide statistics on the follow-up to reports of infringements submitted by the labour inspectorate to the judicial bodies and to state whether measures have been taken or envisaged to strengthen cooperation between the labour inspectorate and the justice system, for example by the creation of a system for the registration of judicial decisions accessible to the labour inspectorate, to enable the central authority to use this information to achieve its objectives, and to include them in the annual report, in accordance with Article 21(e) of the Convention.*

*The Committee also requests the Government to indicate the measures taken or envisaged to strengthen collaboration between the labour inspectorate and employers' and workers' organizations (Article 5(b)), including in the construction sector, which, in the opinion of the Government constitutes a priority for the revival of the country.* The Committee recalls the guidance given in Paragraphs 4–7 of Labour Inspection Recommendation, 1947 (No. 81), regarding collaboration between employers and workers in relation to safety and health.

*Article 7(3). Training of inspectors.* Further to the Committee's comments on this subject, the ITUC notes certain gaps in the area of training, whereas the Government refers to a number of training courses in 2008 and 2011 with the

support of the ILO and international donors. *The Committee requests the Government to indicate the measures taken or envisaged to develop a training strategy, and to provide information on the frequency, content and duration of training given to labour inspectors, and also on the number of participants and the impact of this training on the effective performance of labour inspection duties.*

*Article 14. Notification and registration of industrial accidents and cases of occupational disease.* The Committee notes the comments of the ITUC on the need to provide data on this subject and the information provided by the Government according to which industrial accidents are notified to the general inspectorate of OFATMA. *The Committee requests the Government to describe in detail the system for the notification of industrial accidents and cases of occupational disease and to indicate the measures taken or envisaged following the earthquake, in order to collect and supply statistics on this subject, including in the construction sector.*

*Articles 20 and 21. Annual inspection report.* The ITUC also underlines the need to provide detailed statistics with a view to the publication of an annual report, as provided for in *Article 20*, containing information on the subjects listed in *Article 21(a)–(g)*. The Committee notes the information supplied by the Government according to which the statistics were lost in the aftermath of the 2010 earthquake, but that efforts have been made since then to establish a new statistical database.

The Committee draws the Government's attention to its general observation of 2010, in which it underlines the importance that it attaches to the preparation and publication of an annual report on the work of the labour inspection services. When properly drawn up, the annual report is an essential basis for evaluation of the operation in practice of the labour inspectorate and, consequently, for determining useful resources for improving its effectiveness. The publication of the annual inspection report, especially via modern technological means, can also facilitate the development of exchanges in the areas of conditions of work and protection of workers at regional and international levels, including through technical and financial cooperation. The Committee also recalls its general observation of 2009, in which it underlined the vital importance of the availability of a register of workplaces and enterprises liable to inspection, containing data on the number and categories of all workers employed there.

*The Committee urges the Government, as a preliminary stage in the preparation of an annual inspection report and in order to evaluate the situation of the labour inspection services in terms of their needs, to compile an inventory and register of industrial and commercial workplaces liable to inspection (number, activity, size and geographical situation) and of the workers employed in them (number and categories), and to keep the Office informed of any progress made in this field.*

## Honduras

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)**

The Committee notes the observations received in August 2011 from the Single Confederation of Workers of Honduras (CUTH), and the Government's reply to them. The CUTH refers to the conditions in which Miskito workers carry out dive-fishing for lobster and shrimp. These observations are addressed in the Committee's comments on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

*The Committee requests the Government to reply to the comments the Committee made in 2011, which read as follows:*

The Committee notes the comments of the Honduran National Business Council (COHEP) 6 October 2010, as well as the Government's reply. It also notes the comments of the Honduran United Confederation of Workers (CUTH), dated 31 August and received by the Office on 19 September 2011 respectively, as well as the Government's reply dated 9 November 2011.

*Legislation.* In its comments of 2008, the Committee had noted that the draft revision of the Labour Code was being discussed by the Government and the social partners. *The Committee would be grateful if the Government would provide information on progress made in the aforementioned revision process.*

*Articles 3, 6, 7, 9, 10, 11 and 16 of the Convention. Functioning of the Labour inspection system.* The COHEP notes that: (i) the staff of the Labour Ministry is insufficient and does not have the qualifications necessary for the carrying out of labour inspection visits in workplaces; (ii) the budget allocated to the labour inspection is insufficient; (iii) the inspection services do not have access to vehicles or petty cash; (iv) according to the data provided by the General Labour Inspectorate, its activity has been focused on special inspections or on complaints received, which represent between 80 and 90 per cent of the inspections carried out in the last few years; (v) the inspection has salary limitations due to the low ranking of inspectors within the civil service and the fact that anyone who can read and write is hired; (vi) inspectors have a biased attitude towards the worker and the General Labour Inspectorate does not always respond to requests by employers to check worker wrongdoings; (vii) although section 629 of the Labour Code stipulates that labour inspectors will have the assistance of technical experts during inspections, in practice multi-purpose or multidisciplinary inspections are not carried out.

The Government states that: (i) the General Labour Inspection currently has 108 inspectors at the national level, 22 of which are lawyers, ten are interns and 76 have a title of secondary education; (ii) all the organs of the State, including the ministries, must comply with the provisions of the national budget and do not have the right to exceed the limits set in the budget; (iii) the central headquarters of the General Labour Inspectorate has sufficiently equipped units and four vehicles are distributed among the different regional units, even though there is no budgetary allocation to cover travel expenses for labour inspectors, and in the regional units in the rest of the country there is a lack of logistical support and budget to cover transportation costs; (iv) regular general inspections are carried out, at six-month intervals; (v) General Labour Inspection officials are governed by the Civil Service Act and its regulations and, although they do not have their own statute, they enjoy job security, as it is unusual for

them to be dismissed when governments change; (vi) recruitment of labour inspectors is carried out once candidates have passed the examination provided for in the aforementioned legislation; (vii) the project aimed at strengthening public administration systems to ensure the inspection service is professional, unified and polyvalent, undertaken by the ILO with the financial cooperation of USDOL, conducted a study into posts and salaries and standardized the posts of inspectors I, II and III into two categories of inspectors and supervisors; (viii) the Ministry of Labour and Social Security has occupational doctors and safety and health technical experts, who have responsibility for monitoring compliance with legal provisions in the area of occupational health and safety through visits to workplaces.

The Committee highlights that the issue of establishing the budget share allocation for the functioning of the labour inspection system, so as to take into account the clearly specified needs and requirements of the Convention, has been raised in its comments since 2006. **The Committee requests the Government to provide information on the actions and measures taken, with ILO technical assistance, to carry out a needs assessment of the labour inspection services in the areas of human resources and training, and financial and material resources, and to ensure that the budget share allocation for labour inspection within the national budget is set in proportion to the priority that must be accorded to labour inspection. It also requests the Government once again to provide precise information on the arrangements for the use of the vehicles (four) allocated to the different regional units for labour inspectors while performing their professional duties.**

The Committee also points out that for a number of years it has been asking the Government to ensure that legal provisions are adopted rapidly to guarantee that the conditions of service of inspection staff are such as to ensure they have job security and that they are independent of any changes in government and of any improper external influences. **The Committee requests the Government once again to provide information on the measures adopted or envisaged to complement national legislation with the inclusion of specific legal provisions to guarantee inspection staff job security and independence of any changes in government and of any improper external influences.**

*Articles 12(1)(a) and (2), and 18. Free access for labour inspectors to workplaces liable to inspection.* In its comments of 2006, the Committee had noted that, according to the Government, the Ministry of Labour and Social Security had taken firm measures to extend the right of health and safety inspectors to enter workplaces. In the Inspection Protocols and Labour Inspection Handbook of Procedures, attached to the Government's report form, the Committee finds, however, that the situation has failed to progress sufficiently in practice in that regard. It therefore draws the attention of the Government to the provisions of the Convention pursuant to which the labour inspectors who are provided with proper credentials must be empowered to enter freely and without previous notice, at any hour of day or night, any workplace liable to inspection (*Article 12(1)(a)*) and, on the occasion of an inspection visit, they must notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties (*Article 12(2)*). The Committee also highlights that pursuant to *Article 18*, national legislation must set forth appropriate penalties, which must be effectively applied in cases where labour inspectors are obstructed in the performance of their duties. **The Committee requests the Government to provide information on the measures adopted or envisaged to ensure that both law and practice are brought into line with the requirements of the Convention in that regard.**

**Furthermore, noting that the Government has not responded to its previous comments on the number of joint visits carried out by the Ministry of Labour and Social Security, the Human Rights Commissioner, the Minister for Security and the Procurator General, the Committee would be grateful if the Government would specify the purpose of, and nature of, the participation of each of the above authorities in these inspections.**

*Article 14. Notification of occupational diseases to the labour inspectorate.* The Committee recalls that, the need to complement legislation through a provision stipulating the obligation to notify cases of occupational disease to the labour inspection services has been addressed since the 1990s, and draws the Government's attention to paragraph 118 of its Labour Inspectorate General Study of 2006, in which the importance of establishing a systematic information mechanism to enable the labour inspectorate to have access to the data necessary to determine which activities present a risk and the categories of workers most at risk, and to investigate the causes of occupational accidents and diseases in workplaces and companies under its control. **The Committee therefore requests the Government to indicate the steps taken or envisaged to ensure that national legislation provides for the conditions and the manner in which cases of occupational disease should be notified to the labour inspectorate.**

*Article 15. Obligations and limits to be respected by labour inspectors.* The Committee notes with the ministerial decision attached to the Government's report which contained the Labour Inspectorate's Code of Ethics and was signed on 28 June 2011. It notes that the text includes the expression of values and commitments to which all members of the labour inspectorate must adhere and in particular those prohibiting them from accepting any gifts, presents, subscriptions, favours, gratuities, promises or special advantage and rejecting any kind of direct or indirect offering of bribery, sale or financial profit from workers or employers that might interfere with the fulfilment of their duties. The Committee notes, however, that this text does not take on board the comments that the Committee has been raising since the 1990s concerning the need to specifically prohibit labour inspectors from having any direct or indirect interest in undertakings under their supervision. **The Committee therefore requests the Government once again to provide information on the measures adopted or envisaged to ensure that specific provisions are adopted without delay establishing the prohibition of labour inspectors from having any direct or indirect interest in undertakings under their supervision, pursuant to Article 15(a) of the Convention.**

*Articles 17 and 18. Appropriate penalties.* COHEP considers that the penalties provided for in article 625 of the Labour Code are obsolete, hence they have not been amended since its entry into force. According to the Government, the aforementioned article of the revised Code sanctions the offences listed below with fines varying between 50 and 5,000 lempiras, depending on the individual circumstances of each case, its recurrent character and the capacity of the offending company to pay: (i) non-respect of the orders issued by labour inspectors, within the limit of their legal authority; (ii) obstructing the fulfilment of the duties that labour inspectors are legally entitled to carry out; (iii) physical and psychological aggression towards labour inspectors; (iv) violation by employers of the legal provisions that are not subject to any special penalty. **The Committee would be grateful if the Government would provide a copy of the revised text of article 625 of the Labour Code referred to by the Government in its report form.**

*Articles 19, 20 and 21. Periodical reports and drawing up and publication of an annual inspection report.* The Committee notes with regret that since the ratification of the Convention in 1983, no annual report on the activities of the inspection services has been communicated, as stipulated in *Articles 20 and 21* of the Convention. **The Committee therefore requests the Government to provide information on the measures adopted or envisaged to ensure that the local inspection units produce periodical reports on the results of their activities, as stipulated in Article 19, and that these reports enable the central inspection authority to produce an annual report in accordance with Articles 20 and 21.** In that regard, the Committee

reminds the Government of the guidance provided in Part IV of the Labour Inspection Recommendation, 1947 (No. 81), on how the information required under Article 21 may be broken down.

*Labour inspection and child labour.* In its comments of 2006, the Committee had noted that inspectors specializing in child labour were operating in Tegucigalpa and San Pedro de Sula and had requested the Government to specify why it had decided to appoint child labour inspectors to carry out duties in these locations, and to provide information on the results of their activities. **As the Government has not made this information available, the Committee requests it once again to communicate it and to provide statistical information on the number of visits carried out by labour inspectors, in particular in these regions, the offences found and penalties imposed, and on the advice and information that may have been provided on the matter to employers and workers.**

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.**

## Japan

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)**

The Committee notes the comments made by the Japanese Trade Union Confederation (JTUC-RENGO) in communications dated 2 September 2010 and 26 August 2011 and by the National Confederation of Trade Unions (ZENROREN) in a communication dated 28 September 2010, as well as the Government's reply to all the above.

*Articles 3(1)(b), 5, 13, 14, 16 and 17 of the Convention. Preventive activities of labour inspectors, collaboration with workers' and employers' organizations and programming of inspections.* The Committee notes that in its comments, the JTUC-RENGO deems the existing preventive activities of the labour inspectorate inadequate and indicates that it has requested the Government within the tripartite Labour Conditions Panel to adopt further regulatory measures that ensure compliance with labour standards and prevent industrial accidents. The JTUC-RENGO also objects to the replacement of the system of industrial accident prevention instructors by a group of experts on safety, health and industrial relations established at the level of prefectural labour offices at the end of the financial year 2010. In its 2011 comments, the JTUC-RENGO claims that the system has yet to be provided with adequate budgetary and material resources.

In its reply to the comments, the Government refers to awareness-raising activities such as the dissemination of pamphlets on national labour standards, including on the revised Industrial Safety and Health Law, and to activities conducted in collaboration with the Industrial Injury Prevention Organization including specialized support provided to small and medium enterprises. The Government further indicates that the incidence of industrial accidents and related workers' reports are subject to an analysis by the Labour Standards Inspection Organization in order to target inspections and direct guidance for specific workplaces. Inspections are programmed on the basis of a circular, the "Local Administrative Operation Plan" that identifies priority sectors and issues that have to be considered.

With regard to the replacement of the system of industrial accident prevention instructors, the Government indicates that the Ministry has established the Industrial Safety and Health Experts Conference of Labour and Management, operating at the level of Prefectural Labour Offices, which consists of experts who are familiar with the state of worksites and occupational safety and health (OSH) matters, for more effective and efficient administration of OSH-related policies. The Ministry will hear the experts' opinions on preventive measures against industrial accidents, measures of maintenance and promotion of workers' health, etc., so that the Conference will be able to take action to achieve its objectives. At the same time, the Ministry will hear the opinions of labour and management organizations for more effective OSH activities. The Government also indicates that it is in the process of setting up a budget for the activities of the Conference.

In this context the Committee notes from the annual inspection reports for 2009 and 2010 that the number of reported casualties increased in 2010 compared to 2009 (by 2,041 workers), whereas in 2009, the number of reported casualties had significantly decreased (by 13,573 workers) compared to casualties reported in 2008. At the same time, the average number of on-site inspections carried out per labour standards inspector increased from 37 inspections in 2009 to 43 inspections in 2011.

**The Committee requests the Government to elaborate on the reasons for the reform of the industrial accident prevention system and the composition, structure, mandate and activities of the Conference as well as its impact from the point of view of prevention of industrial accidents (Articles 3(1)(b) and 13). It also requests the Government to indicate how the social partners participate in the activities of the Conference (Article 5(b)).**

**The Committee asks the Government to provide details on the technical information and advice provided to small and medium enterprises in the field of accident prevention in collaboration with the Industrial Injury Prevention Organization (Articles 3(1)(b) and 5(a)).**

**The Committee requests the Government to provide information on the follow-up to the concerns expressed by the JTUC-RENGO within the tripartite Labour Conditions Panel as to the effectiveness of preventive activities.**

**The Committee would be grateful if the Government would provide more information on the manner in which data on industrial accidents are collected as well as any explanations for the fluctuations in these data between 2009 and 2010 (Article 14).**



*The Committee requests the Government to provide disaggregated data by sector on the various categories of casualties reported, the findings of investigations carried out following industrial accidents, and any measures taken or recommended by labour inspectors to minimize risks, prevent the recurrence of similar incidents and punish any parties guilty of labour law violations (Articles 13, 14 and 17).*

*It would also be grateful if the Government would describe how data on industrial accidents are introduced into the inspection planning process in accordance with the Local Administrative Operation Plan as indicated by the Government (Article 16).*

*Article 13. Preventive measures including orders with immediate executory force vis-à-vis the emergency operation of the Nuclear Power Plant Fukushima 1.* The Committee notes that the JTUC-RENGO expresses concerns about the working conditions of the workers involved in the emergency operations at the Nuclear Power Plant Fukushima 1 and underlines the lack of mid- to long-term measures to monitor their exposure to radiation and the need for surveillance from the administration and for preventive measures to be taken by the nuclear operator. The Committee notes from the Government's reply that an on-site survey had been conducted on the plant and that the nuclear operator Tokyo Electric Power Company (TEPCO) was instructed to take measurements of radiation doses, to take corrective measures with a view to complying with the radiation dose limits applicable to emergency workers and to fully enforce preventive measures against heat stroke. It moreover notes that a database for the long-term tracking of the exposure dose and its health effect on workers engaged in emergency works was being set up. The Government also indicates that it took measures under the lead of the "Office on Countermeasures for Health of Workers at TEPCO Fukushima 1 Nuclear Power Plant", which has been set up within the Ministry of Health, Labour and Welfare. *The Committee would be grateful if the Government would provide further information in relation to the mid- to long-term measures taken by the labour inspection in order to monitor the exposure to radiation of the workers involved in the emergency operations at the Nuclear Power Plant Fukushima 1 as well as any follow-up by the operator on advice and instructions given by the labour standards inspectors.*

*In view of the serious and urgent nature of the matter, the Committee would appreciate information on the measures taken under the lead of the Office on Countermeasures for Health of Workers at TEPCO Fukushima 1 Nuclear Power Plant for the supervision of the application of laws on safety and health of workers.*

*Articles 5(b), 6, 10, 11 and 16. Reorganization of labour standards inspection offices and reduction in the number of newly recruited labour inspectors. Status and conditions of service of labour inspectors.*

*Reorganization of inspection offices.* The Committee notes the Government's reply to its previous comments in relation to the reduction of the number of labour standards inspection offices throughout the country following a reorganization. According to the Government, consultations on specific plans for this reorganization had taken place with the social partners within the tripartite Labour Policy Council, and with the workers and employers of the regions affected by the reorganization. Elements taken into account in the framework of the reorganization included "changing demands for administrative bodies" and transport considerations when selecting the offices subject to reorganization. The Committee notes that JTUC-RENGO and ZENROREN expressed their opposition to the restructuring in their 2010 comments. *The Committee requests the Government to provide details on the outcome of the consultations which took place with the social partners on the reorganization of inspection offices and to indicate the specific factors taken into consideration in this framework, including clarifications as to the "changing demands for administrative bodies" mentioned by the Government. It also requests the Government to indicate the impact of the reorganization on the application of Article 11 of the Convention, according to which the labour inspectorate should have accessible local offices, and on the effective functioning of the labour inspection system more generally.*

*Reduction in the number of newly recruited labour inspectors.* The Committee notes that JTUC-RENGO and ZENROREN refer to the inadequate number of labour inspectors in relation to the high number of workplaces covered by the labour inspection system. The JTUC-RENGO and ZENROREN indicate that the Government decided in 2010 to reduce the annual recruitment of government officials and that, consequently, the number of labour standard inspectors' recruits was reduced from 216 in 2009 to 177 in 2010. This information was confirmed by the Government in its report of 2011. The Government indicated that a cabinet decision had been issued in order to reduce the number of newly employed labour standards inspectors to around half of those recruited in 2009. In order to mitigate the adverse effects of this reduction and avoid any regression in terms of labour inspection administration and labour standards enforcement, the reappointment of mandatorily retired ex-public officers had been allowed on a full-time or part-time basis. The JTUC-RENGO criticizes this measure and underlines the need for long-term planning in order to maintain the effectiveness of labour law enforcement through new recruitments rather than the re-employment of retired inspectors.

Referring to paragraph 174 of its 2006 General Survey on labour inspection, the Committee wishes to highlight that although it is aware of the severe budgetary restrictions governments often face, the number of labour inspectors should be sufficient to secure the effective discharge of the important duties of the inspectorate, taking into account the number, nature, size and situation of the workplaces liable to inspection, the number and range of categories of workers employed in such undertakings, and the number and the complexity of legal provisions to be enforced. It notes in this regard the wide scope of application of the Labour Standards Law, as set out in its section 8, including in sectors such as mining and electricity generation, which are by nature prone to OSH risks and even major hazards. It also observes that section 2 of the Industrial Safety and Health Law has the same wide scope of application as the Labour Standards Law. *The*

*Committee requests the Government to provide information on the impact of the recent reduction in the number of newly recruited inspectors, both from the standpoint of budgetary resources and effectiveness of the labour inspection functions, and to give details as to the contractual arrangements and conditions of service applied to labour inspectors who are re-hired after their retirement.*

*The Committee also requests the Government to specify whether the reform has had any impact on the status and conditions of service of currently serving labour inspectors and to provide relevant legislative texts, if any.*

*Article 8. Gender distribution in the labour inspection staff.* The Committee notes with *interest* the information provided by the Government according to which the percentage of women among newly appointed labour standards inspectors increased from approximately 20 per cent in the financial year 2009 to 27 per cent in the financial year 2010, and that the proportion of the number of women among newly employed labour standards inspectors has tended to increase in recent years. It also notes with *interest* the reported efforts undertaken to promote the employment of female inspectors; these include appointing female labour inspectors as panellists in information sessions on the work in labour standards inspection offices, sending them as resource persons to information seminars on the public service at the university, and publishing information on their work on the website of the National Personnel Authority. *The Committee invites the Government to keep the ILO informed of the share of female labour inspector recruits and of the distribution of the inspection staff by gender in the various positions and grades. Moreover, it reiterates its request for the Government to examine the reasons for the low number of women in the labour inspection staff and to continue its efforts to stimulate the interest of potential female candidates for the labour inspection service.*

*Articles 20 and 21. Compilation of information on workplaces.* The Committee notes with *interest* that the labour standards inspection offices use the Labour Standards Administrative Information System in order to process information gathered from several sources on workplaces and on labour law compliance. The Committee recalls its general observations of 2009 and 2010 on the importance of statistics of industrial and commercial workplaces liable to labour inspection in the framework of the elaboration and publication of an annual labour inspection report. *The Committee would be grateful if the Government would provide information on the operation of this information system, the type of information it includes, and the possible use made of the information in this system in the framework of the elaboration and publication of the annual labour inspection report.*

*With reference to its general observation of 2007, the Committee would also be grateful if the Government would provide further information on collaboration between the labour inspection services and the justice system, including through the possible creation of a system of recording of judicial decisions that is accessible to the labour inspectorate to enable the central authority 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).*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Kenya

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)**

The Committee notes with *interest* the Government's indications that it is currently studying with a view to their implementation some of the recommendations made by the labour administration and inspection needs assessment conducted in 2010 (2010 audit) following a request by the Government for technical assistance. The recommendations of the assessment correspond to a large extent to the Committee's previous comments on the application of the Convention. *The Committee requests the Government to indicate the steps taken or envisaged with a view to providing for the application in law and practice of the provisions of the Convention, in light of the recommendations made in the 2010 audit, and to provide a copy of any texts adopted in this regard. Please also indicate any steps taken to obtain access to the necessary funds for this purpose through international cooperation.*

*Article 14 of the Convention. Reporting and investigation of occupational accidents and cases of occupational disease.* The Committee notes that the Government, in reply to the Committee's request to indicate the number of industrial accidents and cases of occupational disease reported in comparison with the number of investigations actually conducted, as well as the action taken following these investigations, merely states that 162 cases of occupational disease were reported to the Department of Occupational Safety and Health services (DOSHS) without providing further details. The Committee also notes the information contained in the annual report of the Commissioner for Labour for 2011 on the total of 6,033 accidents in 2011, disaggregated by economic sector (of which 249 were fatal, and 5,774 non-fatal), and the indication that no data are available on the number of occupational diseases. The Committee has previously noted that section 25 of the Occupational Safety and Health (OSH) Act provides for the development and maintenance of an effective programme for the collection, compilation and analysis of OSH statistics covering occupational accidents and diseases, as well as the existence of an accident database in which information sent through the relevant accident reporting form (DOSHS 1) is entered. In this regard, the Committee notes with *interest* the reference in the 2011 annual report of the Commissioner for Labour that arrangements to disaggregate data are being introduced. It also notes the indication in the Government's report that the Labour Department is currently developing a database which will improve the data capture system and the collection of OSH statistics, and therefore give effect to the above section of the OSH Act. However, the Committee notes that the Government has not responded to its request to provide information on the measures taken to

sensitize medical practitioners, which was indicated as a major cause of the inadequate functioning of the system of notification to the DOSH in practice. *The Committee once again asks the Government to indicate the number of occupational accidents and cases of occupational disease reported in comparison with the number of investigations actually conducted, as well as the action taken following these investigations (improvement or prohibition notices, prosecutions and penalties imposed). It also once again asks the Government to take measures to sensitize medical practitioners (e.g. through awareness campaigns, the distribution of brochures or the organization of training sessions).*

*Please also provide information on any further progress made in the development of the above database to improve the data capture system and the collection of OSH statistics.*

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1979)**

The Committee notes with *interest* the Government's indication under the Labour Inspection Convention, 1947 (No. 81), that it is currently studying with a view to their implementation, some of the recommendations contained in the labour administration and inspection needs assessment conducted by the ILO in 2011, of which many also relate of the functioning of the labour inspection services in agriculture. *The Committee requests the Government to indicate the steps taken or envisaged with a view to the implementation of the recommendations contained in the needs assessment in so far as they also concern the application of the present Convention (e.g. the provision of adequate transport facilities, arrangements to share such facilities, the reimbursement of travel expenses, etc.)*

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

## **Lebanon**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

The Committee notes the Government's report, but observes that it contains only information on comments the Committee made in its previous direct request and does not reply to the comments made in its observation. It is therefore bound to repeat the latter, which read as follows:

*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 raises other matters in a request addressed directly to the Government.

*The Committee hopes that the Government will do its utmost to take the necessary measures in the near future.*

## **Lesotho**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2001)**

The Committee notes the Government's report in which it expresses its commitment to overcome several of the persistent difficulties identified in the Committee's previous comments. In this regard, the Committee notes with *interest* the fact that one of the envisaged outcomes of the Lesotho Decent Work Country Programme (DWCP) for 2012–17, is to promote and enhance the effectiveness of the labour administration and labour inspection systems, notably by setting up a

national tripartite mechanism on labour inspection, implementing an information management system and promoting staff training.

*Article 3(1) and (2) of the Convention. Performance of the primary duties of labour inspectors.* In reply to the Committee's previous comments, the Government specifies that labour inspectors have always had and still carry out routine inspections along with inspections arising out of complaints. It adds however, that as an inherent and historical function of the inspectorate, labour inspectors still attend to labour disputes reported within various district labour offices by the public. In this regard, the Committee would like to emphasize once again, with reference to paragraph 72 of its 2006 General Survey on labour inspection, that the time and energy that labour inspectors spend on seeking solutions to collective labour disputes, especially in a situation where resources are scarce, are often at the expense of the performance of their primary duties, as defined in *Article 3(1)* of the Convention. The Committee noted in its previous comments that inspectors' duties in the area of dispute settlement continued as long as the Directorate of Dispute Prevention and Resolution was not yet operational. **The Committee reiterates its request to the Government for measures to be taken so that labour inspectors quickly resume their primary duties as defined in Article 3(1) of the Convention to enable them to carry out inspections in the highest possible number of industrial and commercial workplaces liable to inspection, and to relieve labour inspectors from conciliation duties which normally pertain to the Directorate of Dispute Prevention and Resolution.**

*Article 5(b). Collaboration with workers' and employers' organizations.* According to the Government's report, it is envisaged to strengthen collaboration with workers' (through the reporting of violations) and employers' organizations (through the encouragement of their members to respect legislation). **The Committee requests the Government to provide information on steps taken or envisaged in this regard and on their impact.**

*Article 7(3). Training of labour inspectors.* The Government reports that it has undertaken to professionalize its inspectorate and, to this end, it intends to approach the ILO Decent Work Team in Pretoria to assist in structuring a course for the inspectorate to be offered by the National University of Lesotho. **The Committee requests the Government to provide information on progress made in the introduction of the training course as well as on its content, duration, attendance and impact on the effective discharge of the duties of labour inspectors, including the enforcement of legal provisions concerning conditions of work and the protection of workers, the provision of technical advice and information on the most effective means of complying with these provisions and the identification of any legislative gaps relating to protection at work.**

*Articles 6, 7, 10 and 11. Status, recruitment procedure and number of labour inspectors and material means placed at their disposal.* The Committee notes that the Ministry of Labour intends to approach the Ministry of Public Service with a view to improving the employment conditions of the labour inspectorate. The Government refers to the filling of the long-standing vacancy of the position of inspection manager in May 2011 and to improvements in the transport facilities at the disposal of the labour inspectorate (six motorcycles which labour inspectors should be able to use after they have been provided with protective clothing). It adds that while it is committed to ensuring the necessary resources for the labour inspectorate to provide its functions efficiently, the improvements envisaged may not be realized in the near future due to financial constraints.

The Committee recalls its previous comments on the shortage of labour inspectors and the fact that they are not recruited based on a personal interest in carrying out labour inspection duties, but under a system of compulsory placement, which according to the Government has an adverse effect on their 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 means 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 among them moving on in search of better career prospects. **The Committee once again strongly encourages the Government to take concrete measures, including in the context of the 2012–17 DWCP, in order to identify the financial resources necessary to meet the most urgent priorities for the improved functioning of the labour inspection system. In particular, the Committee reiterates its request for the Government to take all necessary measures so as 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. The Committee requests the Government to keep the Office informed of any concrete steps taken in this regard and once again reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.**

*Articles 5(a), 17 and 18. Effective enforcement of sufficiently dissuasive penalties and cooperation with the justice system.* The Committee notes that, according to the Government, the amendment of the provisions establishing penalties for the violation of labour legislation constitutes an essential part of the revised draft Labour Code, which is currently being examined by the Parliamentary Council prior to its submission to Parliament. Moreover, the filling of the long-standing vacancy of the position of inspection manager, who is competent to refer matters for prosecution, should contribute towards improving the number of administrative or penal actions taken in response to the violations observed by labour inspectors. The Committee recalls that these measures constitute a follow-up to recommendations made in 2005 by the ILO in the framework of an assessment aimed at improving the operation of the labour inspectorate. **The Committee requests the Government to provide information on progress made in relation to the amendment of the**

*provisions establishing sufficiently dissuasive penalties for the violation of labour legislation and the increase in the number of administrative or penal actions taken in response to the violations observed by labour inspectors.*

*Articles 20 and 21. Annual labour inspection report.* According to the Government's report, the Ministry of Labour is in touch with the ILO Decent Work Team in Pretoria in order to seek assistance for the revamping of the computer system of the labour inspectorate which, as the Committee has previously noted, is an essential step for the elaboration, publication and communication to the ILO of an annual labour inspection report. ***The Committee once again 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) to (g) of Article 21.***

*The Committee hopes that the Government will soon be in a position to report to the Office on concrete progress made on all the subjects raised above.*

## Madagascar

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)**

The Committee notes the comments of the General Confederation of Workers' Unions of Madagascar (CGSTM) dated 26 August 2011.

*Articles 6, 7 and 11 of the Convention. Status, conditions of service and work of labour inspectors. Means at the disposal of the labour inspectorate.* In its previous comments, the Committee expressed its concern at the situation described not only by the Government but also by the Autonomous Trade Union of Labour Inspectors (SAIT) with respect to 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. This situation seemed to be exacerbated by a clear lack of consideration on the part of the authorities towards labour inspection staff, resulting in a weakening of the public institution to which they belonged, the role of which was to enforce the labour legislation. Inspectors were 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 Committee also noted that the rare information provided by the Government concerning the operation of the labour inspectorate in practice indicated a clear lack of understanding of the value and socio-economic role of this public institution. Recalling that 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 Committee noted that 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, seemed to confirm the SAIT's opinion that these measures were designed to punish trade union membership or activity.

The Committee notes with *regret* that the Government's report merely states that, due to the increase in the number of inspectors who have graduated recently, redeployment measures were taken at the level of the ministry, accompanied by a decision to assign inspectors to the regions, without any consideration of their trade union membership. However, according to the Government, the assignments were suspended because of political instability. The Government adds that the draft Decree concerning the special regulations for senior labour inspectors has yet to be finally adopted and enacted by the competent authorities on account of the present crisis. The Committee notes that, without this Decree, the labour inspectors are at present in a legal vacuum as regards their specific status (given that Decree No. 61-226 establishing a body of labour and social inspectors and establishing the specific status of this body seems to have been repealed by Act No. 2003-11 on the general regulations for civil servants). The Committee recalls that the Higher Council of the Public Service had already approved this draft Decree in 2007 with a view to improving inspectors' working conditions which, according to the SAIT, are far inferior to those of other bodies of civil servants with comparable qualifications and similar functions, such as civil administrators, tax inspectors, etc., thereby constituting an unjustified discrimination. The Committee notes finally that, in its recent comments, the CGSTM confirms that the number of labour inspectors and means at their disposal are inadequate to ensure an efficient job of labour administration and inspection, which might even, in some cases, lead to some inspectors being influenced by employers.

In paragraphs 218 and 219 of its 2006 General Survey on labour inspection, the Committee referred to situations in which labour inspectors' conditions of service were very precarious, and in which mistrustful attitudes as to their integrity, rather than any concern to keep them in the service, appeared to underlie their career management, with labour inspectors being transferred without any consideration for the negative effects on their family and social life. The Committee emphasizes that the competent authority at national level should strive to ensure that labour inspectors are treated with the respect to which their everyday responsibilities entitle them to and with due regard to the social importance of their duties, 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 the enterprise (2010 general observation). They should legitimately be able to expect career prospects that value their seniority, enthusiasm and commitment, and any unprofessional conduct on their part should be penalized, depending on its severity, in accordance with formal procedures which protect them from arbitrary decisions. As the Committee emphasized in its 2006 General Survey (paragraphs 202 and 204), inspectors cannot act in full independence, as required by their functions, if their service

or their career prospects depend on political considerations. It is vital that inspectors' levels of remuneration and career prospects, as well as the material resources and training put at their disposal, be such that high-quality staff are attracted, retained, and protected from any improper influence.

*The Committee once again firmly hopes that the Government will undertake an in-depth examination of the transfers reported by the trade union SAIT. It asks the Government to keep the Office informed of the measures taken in this respect and to indicate whether the Government intends reviewing the decisions to transfer officials in question, which have been suspended for the time being.*

*The Committee asks the Government to take the necessary measures to ensure that the draft Decree on the status of labour inspectors be adopted and enacted as soon as possible and to keep the Office informed of any progress in this respect.*

*The Committee strongly encourages the Government to request technical assistance from the Office with a view to restoring the normal functioning of the labour inspection system and identifying donors for this purpose.*

*Articles 19, 20 and 21. Reporting obligations. Coordination of the submission of periodical reports by a central authority.* The Committee notes with *regret* that the Office has not received a consolidated annual inspection report since 1995, as the statistics contained in the Government's report only cover the region of Analamanga. The CGSTM also referred to this reporting failure in its comments. The Committee also notes the Government's indication that there are apparent difficulties in the collection and delivering of data from other regions. Referring to its 2010 general observation, the Committee recalls the importance of collecting and publishing information on labour inspection activities in an annual report, to be able to assess the functioning of the labour inspection system, the identification of priorities and the formulation of appropriate budget estimates based on consultation with the social partners. *The Committee requests the Government to provide a copy of a periodical report of the local inspection offices (Article 19) and to indicate the way in which these reports are compiled and submitted to the central authority, with a view to identifying any possible shortcomings in the system of drafting an annual report, in accordance with Articles 20 and 21 of the Convention.*

The Committee is raising other points in a request that it is addressing directly to the Government.

## Malawi

### **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:

The Committee notes that the Government's report contains vague information on the application of the Convention. The report indicates in particular that a total of 1,169 labour inspections have been carried out and 1,413 visits have also been made to various workplaces. It is also indicated that approximately 40 inspectors and 46 assistant labour inspectors are distributed in every one of the 28 districts of Malawi. While taking due note of this information, the Committee notes that the Government does not reply to the Committee's previous comments. It must therefore repeat its previous observation which read as follows:

*Article 4(1) of the Convention. Need to re-establish a central authority entrusted with control and supervisory powers in the labour inspection system.* According to the Government's vague indications in reply to the observation made by the Committee on the basis of the recommendations of an ILO technical mission which visited the country in May 2006: (1) the labour inspection system is in the process of being developed in consultation with social partners; (2) the Ministry has already started putting in place measures to come up with a labour inspection policy and set guidelines, and a meeting was held in 2009 to kick-start the process; (3) the Ministry has placed emphasis on the planning of inspections, and sweeping inspections have been carried out in the major cities, while some joint inspections with labour inspectors and safety and health inspectors have been undertaken, for example in the northern region of the country; (4) the functional review of the Ministry, under which the Inspection Services Unit is to be strengthened to enable it to set annual targets and conduct inspections in the field, is awaiting approval; and (5) the Ministry has undertaken supervisory visits to field offices and organized some training for inspectors, including those responsible for occupational safety and health with a view to developing an integrated inspection system.

In addition, the Committee notes from the Government's report under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), that the budgeting and funding of labour inspection is decentralized in such a manner that each office is allocated funds directly by Treasury according to the latter's priorities. Consequently, offices with motorcycles or motor vehicles cover fuel and maintenance, while the Ministry only receives reports on the activities performed. Based on this information, the Committee observes that the very notion of a central labour inspection authority seems to have become devoid of all substance, as the Ministry's only residual role consists of receiving activity reports from labour inspection offices, without any power to determine the needs of the labour inspection services in terms of financial and material resources with a view to their proper operation. The objective of the ILO technical mission was to help the Government to anticipate the effects of globalization on working conditions and workers' rights, to secure the commitment of the social partners to the principle that an effective labour inspection service allows the twofold interests of social protection and improved productivity, and to raise the Government's awareness of the importance of the tripartite dimension of labour administration. Although it made no reference to a decentralized labour inspection system, the mission emphasized, on the contrary, that there were no inherent or structural barriers for the operation of an effective and efficient labour inspection service; and that there was considerable room for improvement, in particular in policy, planning, management procedures, communications, equipment and training, and that this could be done by rationalizing, streamlining and consolidating the inspection functions of the Labour Directorate in the field structure. The decentralized operation of the labour inspection system, as described by the Government in the report on the application of Convention No. 129, is not such as to meet the economic and social objectives of the labour inspection Conventions. The obligations deriving from the ratifications of a Convention in any event remain the responsibility of the State. Consequently, the Government is bound, among other obligations, to: (i) observe the principle of placing the labour inspection system under a central authority, pursuant to *Article 1*; (ii) ensure that the number of labour inspectors is determined on the basis of the criteria listed in *Article 10*;

and (iii) make the necessary arrangements to equip labour inspectors with the material means and transport facilities, and to reimburse any travelling and incidental expenses necessary for the performance of their duties (*Article 11*). The Government is also bound under the Labour Administration Convention, 1978 (No. 150), which has also been ratified by Malawi, to ensure that the staff of the labour administration system have the status, the material means and the financial resources necessary for the effective performance of their duties. Consequently, the allocation to labour inspectorates of material means and financial resources should be left to the discretion of the decentralized authorities, but should be determined by the Government at the central level in accordance with the priorities of labour inspection and national economic and financial possibilities. Only if the central labour inspection authority is entrusted with the powers laid down in the Convention can the Government's commitments, as reaffirmed in its report, be fulfilled and an annual report on labour inspection activities, as provided for in *Articles 20 and 21*, be published and serve as a basis for the assessment by the central authority of the respective needs and priorities. The technical assistance mission recommended the strengthening of the Office of the Chief Labour Officer in order to allow it to play a more important role in the setting of annual targets, the monitoring of performance by both the field and headquarters and the evaluation of the quality of inspections themselves. It added that more work is required in Malawi if the goals of decent work are to be achieved and expressed the view that as the country has embarked on a process of attracting foreign investment in agriculture and manufacturing, especially textiles, there is a need to strengthen institutions that will promote a good and fair labour market.

***The Committee urges the Government, to provide details of the measures announced in its report as a follow-up to the recommendations of the ILO technical mission and to provide copies of all relevant texts or documents. It also urges it to adopt all the necessary measures to secure an inspection system operating under the supervision and control of a central authority (Article 4) that is provided with adequate human resources in terms of both numbers and skills (Articles 6, 7 and 10) and the material conditions necessary for the exercise of its functions in relation to labour inspections (Article 11), and to keep the ILO informed of any developments in law and in practice in this respect.***

*Articles 20 and 21. Annual report on labour inspection activities.* The Committee notes with **concern** that the statistics of inspections covering all the sectors of the economy, as published in the *Labour Statistics Yearbook*, show a significant decrease from 3,043 in 2006 to 1,088 in 2007. Recalling that an annual report on labour inspection activities, which has to be published and communicated to the ILO in accordance with *Article 20*, shall contain information on each of the topics listed in *Article 21*, the Committee observes that the above statistics do not allow any appraisal of the effect of this decrease in inspections on compliance with the legislation covered by this Convention. It draws the Government's attention to Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), which provides guidance on the manner in which such information could be presented. ***The Committee therefore asks the Government to provide the available statistics on the types of industrial and commercial workplaces and indications of the legal areas targeted by inspections and the results achieved during the period covered by the next report. It also asks the Government to indicate the measures taken to ensure the publication of an annual report, as provided for in Articles 20 and 21.***

*Labour inspection activities targeting child labour.* According to the Government's report, 3,000 children were removed from employment in the framework of the ILO-IPEC programme, instead of the target of 1,500. ***Noting that the project mostly targets child labour in agriculture, the Committee would be grateful if the Government would provide the ILO with the latest statistics on labour inspection activities pertaining to child labour, specifically in industrial and commercial workplaces, and the action taken as a result.***

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

## **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:

The Committee draws the Government's attention to its observation under the Labour Inspection Convention, 1947 (No. 81), and asks it to provide the ILO with information relating to the points raised as far as they also concern the present Convention.

*Article 7 of the Convention. Need to re-establish a central authority entrusted with control and supervisory powers over the labour inspection system in agriculture.* With reference in particular to the indication by the Government that the budgeting and funding of labour inspection is decentralized in such manner that officers with motorcycles or motor vehicles take care of the fuel and maintenance, and the Ministry only receives reports on the activities performed, the Committee would like to emphasize the overall crucial importance for labour inspectors to have at their disposal appropriate transport facilities to be in a position to perform their duties in most undertakings liable to labour inspection. Taking into consideration that agriculture is the major economic sector of the country, the Committee notes with concern, according to the description by the Government of the way that decentralization operates, that it is not the obligation of the Government to provide for appropriate conditions of work for labour inspectors in agriculture, as this is left to the discretion of each district authority. As emphasized in the observation under Convention No. 81, the allocation to the labour inspectorates of material means and financial resources should not be determined by decentralized labour administration authorities, but by taking into account nationwide labour inspection priorities and national economic and financial possibilities. Only if the central labour inspection authority is entrusted with the powers laid down in the Convention can the Government fulfil its commitments, including the obligation to ensure the publication of an annual inspection report containing the information required by *Article 27* in order to give the central authority the necessary basis for the identification of the priority actions to be undertaken. The Committee also draws the Government's attention to the specific recommendation made by the ILO technical assistance mission which visited the country in 2006 concerning the need to strengthen the labour inspection system in agricultural undertakings with a view to securing decent work in the most attractive sector in the country for foreign investments.

***The Committee is bound to urge the Government, in the light of the above: to provide details of the progress achieved in the implementation of the measures announced in its report to follow up the recommendations of the ILO technical mission, in so far as they relate to labour inspection in agriculture; to provide copies of all relevant texts or documents and to adopt all measures that are essential to secure a labour inspection system in agriculture under the supervision and control of the central authority that is provided with human resources and material conditions of work adapted to the specific needs of the agricultural sector (Articles 8, 9, 14 and 15); and to keep the ILO informed of any developments in this regard. It also urges the Government to send a copy of any relevant legal texts and documents.***

The Committee notes with concern that the statistics of inspection visits covering all sectors of the economy published in the *Labour Statistics Yearbook* show a significant decrease (from 3,043 in 2006 to 1,088 in 2007). The Committee recalls in this respect the requirements for the publication and communication to the ILO of an annual report on labour inspection activities, as provided for in *Article 26*, containing information on each of the topics listed in *Article 27* relating to labour inspection in agricultural undertakings. The Committee observes that the above statistics do not allow any appraisal of the extent to which the decrease in inspection visits affects the application of the Convention. ***The Committee therefore asks the Government to provide any available statistics on the types of agricultural undertakings and legal areas targeted by the inspections and the results achieved during the period covered by the next report.***

*Labour inspection activities targeting child labour.* The Committee notes the Government's indication that, instead of the target of 1,500, a total of 3,000 children were removed from employment in the framework of the ILO-IPEC programme. ***The Committee would be grateful if the Government would indicate the role played by labour inspectors in this regard.***

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

## Malaysia

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)***

*Articles 3(2) and 5(a) of the Convention. Duties entrusted to labour inspectors in relation to the enforcement of immigration law.* The Committee notes the information in the Government's report that there are no separate data available on labour inspection activities relating to migrant workers and that, contrary to the Government's indications in its last report, any collaboration between the labour inspectorate and the Department of Immigration, the Department of Police or other relevant departments is not intended to enforce immigration law. Each department addresses its own issues which are under its jurisdiction and based on the legislations that it is responsible for enforcing. However, the Committee notes from the information contained in the annual reports of the Labour Department for Sabah, the Labour Department for Sarawak and the Labour Department for Peninsular Malaysia that, since the 2010 amendments to the Anti-Trafficking People and Smuggling of Migrants Act 2007, labour officers have assumed enforcement functions in this area.

The Committee observes that through the 2010 amendments, the title of the Act has been amended to "the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act," and under section 27(1)(e) of the Act, all labour officers (including labour inspectors) are included among the enforcement officers for the purpose of the Act along with police officers, immigration officers, customs officers and the Malaysian Maritime Enforcement Agency Officers. A new section (Part IIIA) has been inserted specifically relating to the offense of smuggling of migrants and a distinction introduced between trafficked persons and "illegal migrants" who, according to the explanatory statement attached to the bill, "normally seek and finance the illegal migration themselves and the only danger of exploitation faced is cruel or inhuman or degrading treatment of being endangered in the course of their journey". Indeed, while the Act still provides immunity to trafficking victims for immigration offences such as illegal entry, unlawful presence and possession of false travel documents (section 25) and entitles trafficked persons to victim care, section 51(1)(a) of the Act entrusts enforcement officers, including labour inspectors, with investigating into the circumstances of each case for the purpose of reporting to a magistrate as to whether a person is a trafficked person entitled to protection or otherwise qualifies as an "illegal migrant" who is excluded from the protection of the Act. Furthermore, in the case where victims are identified as trafficked persons by enforcement officers, section 51(3) provides that if the magistrate is satisfied that the person is a trafficked person who is a foreign national, he/she may order that such trafficked person be placed in a place of refuge for a period not exceeding three months and thereafter to release him to an immigration officer for necessary action in accordance with the provisions of the Immigration Act 1959/63. In case the magistrate finds that the person is not a trafficked person and is a foreign national, he/she may order that person to be released to an immigration officer for necessary action in accordance with the provisions of the Immigration Act 1959/63. Section 51(5) provides that an extension of the protection order may be granted only for the purpose of completing the recording of evidence by the trafficked person.

In relation to the scope of the Convention with regard to victims of trafficking or workers who have been smuggled into the country at their own will, the Committee would like to refer to paragraphs 76–78 of its 2006 General Survey on labour inspection, in which it emphasized, in relation to the assignment to labour inspectors of the task of supervising the legality of employment and prosecuting violations, including migrant workers in an irregular situation, that the primary duty of labour inspectors is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers and not to enforce immigration law, and that the Convention does not contain any provision suggesting that any worker be excluded from the protection afforded on account of their irregular employment status. Given the potentially large proportion of inspection activities devoted to verifying legality of immigration status, the Committee has emphasized that additional duties that are not aimed at securing the enforcement of the legal provisions relating to conditions of work and the protection of workers should be assigned to labour inspectors only in so far as they do not interfere with their primary duties and do not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

The Committee also wishes to emphasize that entrusting labour inspectors with the function of enforcing the Anti-Trafficking People and Smuggling of Migrants Act 2007, as amended, may not be conducive to the relationship of trust needed to create the climate of confidence that is essential for enlisting the cooperation of employers and workers with labour inspectors, as the final outcome seems to be that irrespective of their status as victim of trafficking or smuggled



worker, foreign workers may be doubly penalized by not only losing their jobs, but also facing expulsion. The Committee recalls that the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of the Convention. This objective can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and the protection of workers.

*The Committee therefore requests the Government to indicate the measures taken or envisaged, including the amendment of section 27(1) of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, so as to ensure that the functions of enforcement officer in relation to trafficking in persons and smuggling of migrant workers are dissociated from those of inspecting the observance of workers' rights.*

*The Committee would be grateful if the Government would describe the role of the labour inspectorate and the justice system in ensuring the application of sufficiently dissuasive sanctions against employers as well as the enforcement of employers' obligations with regard to the rights of foreign workers in an irregular situation, irrespective of whether they have been smuggled or trafficked, such as the payment of wages, social security and other benefits for the period of their effective employment relationship even where they are subject to expulsion or after they have been expelled. The Committee asks the Government to provide information on the number of cases in which workers found to be in an irregular situation have been paid their due employment-related rights.*

*In cases where relevant provisions have not yet been adopted, the Committee requests the Government to take the necessary measures for the introduction of swift and effective procedures enabling foreign workers to recover wages and benefits due and to keep the Office informed.*

*Noting that foreign workers found to be smuggled are not granted immunity for immigration offences such as illegal entry, unlawful presence and possession of false travel documents, the Committee requests the Government to specify any sanctions imposed for these violations and to communicate the relevant legal texts.*

*Please also specify the nature of the cooperation between labour inspectors and police, immigration and customs officers in the exercise of their respective areas of competence.*

*Articles 5(a), 20 and 21 of the Convention. Obligation to publish and communicate an annual report on the work of the labour inspectorate and the value of registers of workplaces in this regard.* The Committee notes that an annual report of the work of the labour inspection services has not been received. It notes however, that some elements relating to the subjects covered in *Article 21 (a)–(g)* of the Convention are provided in the annual reports for 2010 of the Department of Occupational Safety and Health (DOSH) and the Labour Departments for Peninsular Malaysia, Sabah and Sarawak, which are available through the website of the Ministry of Labour (MOHR). However, this information is insufficient to allow for an informed appreciation of the application of the Convention in practice. The Committee would like to recall that these data must be published as an integral part of an annual report on the work of the labour inspection services (*Article 20(1)* of the Convention).

In this regard, the Committee would like to draw the Government's attention to its general observation of 2010, where it emphasized the benefits to be derived from drawing up and publishing an annual report on the work of the labour inspectorate. 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 services. In this context, it also recalled that the ILO 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.

The Committee would also like to draw the Government's attention, once again, to its general observation of 2009, in which it emphasized the importance of establishing and updating a register of workplaces and enterprises liable to inspection and the number of workers employed therein, which would provide the central labour inspection authorities with the data that are essential to prepare the annual report. Having previously noted the establishment of an electronic database system for the recording of new workplaces and data on inspection activities at the Labour Department Sarawak, the Committee hopes that such registers will also be established at the DOSH and the Labour Departments Sabah and Peninsular Malaysia, in order to enable the Government to fulfil its reporting obligations under the abovementioned Articles.

*The Committee once again requests the Government to take all necessary measures under Articles 20 and 21 of the Convention with a view to publishing and transmitting to the Office an annual report on the work of the inspection services under the control of the central labour inspection authority in its entirety, including on the work of the DOSH and the Labour Departments Sarawak and Sabah. Please provide information on any steps taken in this regard.*

*In particular, please provide information on the efforts made to establish or, where appropriate, to improve a register of workplaces liable to inspection, including inter-institutional cooperation between the labour inspection services and other government bodies and public or private institutions (tax services, social security bodies, technical supervisory services, local administrations, the judicial authorities, occupational organizations, etc.) in possession of relevant data (Article 5 of the Convention).*

## Mauritania

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)**

The Committee notes the communication made by the Government delegation within the Committee on the Application of Standards at the 101st Session of the International Labour Conference in June 2012, and the Government's report received at the Office on 12 September 2012. It also notes the observations from the General Confederation of Workers of Mauritania (CGTM) dated 30 August 2012.

*Articles 3, 6, 10, 11, 14, 16, 20 and 21 of the Convention. Status, recruitment, training, powers, activities and material means of the labour inspectorate. Annual inspection report.* The Committee notes with **interest** the information contained in the Government's report to the effect that 40 labour inspectors and labour controllers were recruited in 2009 and received a two-year period of training at the National School of Administration (ENA) before being subsequently appointed to the ten regional inspectorates in the country. In addition, about ten training workshops have been organized by the ILO since 2008 in the context of the ADMITRA and PAMODEC projects, in addition to the training given at the Tunis and CRADAT centres; the labour inspectorate has been equipped with a methodological guide which has enabled an increased number of inspections in the field; and a "toolkit" for labour inspectors has been devised by the Dakar office and will be distributed to inspectors in the course of this year. The Government also refers to improvements in the equipment of the regional labour inspectorates through a World Bank project (the PRECASP project) but does not state whether this equipment has already been distributed to the regional services.

However, the Committee notes with **regret** that once again no annual report has been received which would enable the Committee to evaluate the application of the Convention in practice, despite the undertaking made by the Government representative in the Committee on the Application of Standards to send to the ILO all annual reports of the labour inspectorate in addition to an evaluation of the impact of the strengthening of human and material resources on the application of the laws and regulations in Mauritania. It also notes with **regret** that the Government merely reiterates, for the third time, its intention to put a stop, in conjunction with the Ministry of Finance, to the unequal treatment received by labour inspectors, who have been the only public servants who have not received an allowance granted by a decree of 2007 to all other branches of the administration.

Despite the adoption in 2007, after several years of preparation, of special regulations for the labour administration establishing the status of labour inspectors and controllers, the Committee notes that, according to the CGTM, labour inspectorates do not have the independence necessary for the performance of their duties, since they depend on a Directorate of Labour which can "use" labour inspectors, transfer them or lay them off. According to the CGTM, no cases have ever been seen in which labour inspectorates of their own initiative, as provided for by law, have dealt with a violation, infringement or reprimand concerning an employer as part of establishing better labour relations within enterprises. The CGTM refers to cases of occupational disease such as silicosis, which, it claims, is taking a serious toll in the National Industrial and Mining Company (SNIM), and cyanide and lead poisoning which are allegedly decimating the workforce of the Mining and Copper Company (MCM), and also refers to apparatus used at the autonomous port of Nouakchott, which allegedly causes frequent fatalities among dockers. Moreover, according to the CGTM, labour inspection staff do not have satisfactory conditions of work, and even less motivation, to enable them to perform their duties. Rather, they are simply seeking a means of subsistence and are not feared by any employer. The CGTM notes the dire lack of financial and material resources necessary for the labour inspectorate to do its work effectively, to the extent that labour inspectors are obliged to make use of the services of private individuals for the drafting and printing of their reports, including infringement reports. Lastly, the CGTM emphasizes that the level of qualifications of inspectors is low owing to the fact that recruitment is carried out under conditions which lack transparency and impartiality.

*The Committee requests the Government to send any comments which it considers appropriate in response to the observations from the CGTM. It also requests the Government to supply further details of the progress of the World Bank project for improving the equipment of the regional directorates, and on the impact of the methodological guide to inspections drawn up with ILO support, sending copies, where applicable, of any relevant documents or reports.*

*The Committee requests the Government once again to take steps as soon as possible to ensure that allowances are paid to labour inspectors that take account of the specific nature of their duties, and to keep the Office informed of any further developments in this respect.*

*Noting the Government's indication that a Decent Work Country Programme (DWCP) for Mauritania is due to be signed in the coming months, the Committee again requests the Government to make use of this programme to take all necessary steps to reinforce the labour inspectorate, with technical support from the ILO, with a view to establishing a labour inspection system that operates on the basis of the provisions of the Convention as regards scope (Articles 1 and 2); duties (Article 3); organization under the supervision of a central authority (Article 4); cooperation with other bodies and with employers and workers or their organizations (Article 5); status and conditions of service of labour inspectors (Article 6); requisite qualifications for recruitment and training (Article 7); criteria for determining the number of inspectors (Article 10); material and logistical resources needed for the performance of their duties (Article 11); inspectors' prerogatives (Article 12); their powers (Articles 13 and 17); and their obligations (Articles 15, 16 and 19); and also in terms of the central authority's obligation to publish and to communicate to the ILO an annual report on the work of the inspection services under its control (Article 21).*

*In order to establish a labour inspection system which meets the social and economic objectives pursued by the Convention, the Committee requests the Government also to ensure, as far as possible, the implementation of the measures described in the general observations made by the Committee in 2007 (on the need for effective cooperation between the labour inspectorate and judicial bodies), in 2009 (on the availability of statistics concerning industrial and commercial workplaces liable to labour inspection and the number of workers covered, as basic information for an evaluation of the application of the Convention in practice), and in 2010 (on the publication and content of an annual report on the operation of the labour inspection services).*

## Mauritius

### **Labour Statistics Convention, 1985 (No. 160) (ratification: 1994)**

The Committee takes note of the Government's report, received in September 2012, in reply to the request made by the Conference Committee on the Application of Standards in June 2012.

*Article 3 of the Convention. Consultations with the representative employers' and workers' organizations.* The Committee notes that in reply to its 2011 observation, the Government indicates that the last meeting by Statistics Mauritius (previously known as the Central Statistics Office) with employers' and workers' organizations was held in April 2010 in the context of an ILO expert mission. The Government further indicates that such meetings are organized on an ad hoc basis. However, Statistics Mauritius consults ministries and departments each year to assess their data needs and includes them in the form of additional questions in the Continuous Multi-Purpose Household Survey (CMPHS) questionnaire. Furthermore, no change has been brought to the design of concepts, definitions and methodology used for the collection, compilation and publication of the statistics covered by *Articles 7–10 and 13–15* of the Convention. ***The Committee invites the Government to indicate in its next report the measures taken or envisaged in order to comply with the obligation to consult the social partners, in the event of designing or revising the concepts, definitions and methodology used in respect of the statistics required under this Convention (Articles 7–10 and 13–15).***

*Article 8. Statistics on the structure and distribution of the economically active population.* The Government indicates that the 2011 methodological report on population census will become available by 2013 and that census results giving statistics on the structure and distribution of the economically active population will become available by December 2012. ***The Committee invites the Government to supply the abovementioned information once it becomes available.***

*Articles 9(2) and 10. Compilation of statistics on time rates of wages and normal hours of work, and statistics on wage structure and distribution.* In its previous comment, the Committee had noted with satisfaction that the CMPHS had started to collect data disaggregated by sex. In addition, the Committee had also noted with satisfaction that statistics on the distribution of the employed population by hours of work, industry and occupation and on earnings by industry, occupation and sex had been published in June 2010. In its last report, the Government indicates that the average monthly income by industrial sector and occupational group based on the CMPHS data has been published in the annual Economic and Social Indicators on Labour Force, Employment and Unemployment for the year 2011, in May 2012. In addition, data on the distribution of employed population by hours of work, industry, occupation, as well as data on income from work by industrial sector and sex were also published in May 2012. ***The Committee would be grateful if the Government would continue to regularly provide information on these publications as well as the resulting statistics.***

*Article 14. Statistics on occupational injuries and diseases.* In reply to the Committee's previous comments, the Government indicates that the implications and practical aspects of the introduction of measures to cover self-employed workers have to be carefully examined in consultation with all ministries and divisions, prior to being in a position to communicate its stand on the issue. The Committee welcomes the Government's request for technical assistance from the ILO on how best to implement the provisions of this Article. ***The Committee therefore hopes that ILO technical assistance on the matter will allow the Government to provide information relating to future developments with regard to the application of Article 14.***

*Article 15. Statistics on industrial disputes.* The Government indicates that, following the coming into force of the Employment Relations Act (EReA) 2008, unless resolved voluntarily between parties or as a result of conciliatory services provided by the Ministry of Labour, Industrial Relations and Employment or the Ministry of Civil Service and Administrative Reforms, all labour disputes are reported to the Commission for Conciliation and Mediation. The Committee notes with *interest* that it is envisaged to consult the social partners at the level of the Labour Advisory Council with regard to compilation of the relevant statistics, given the new legal set-up in the EReA concerning dispute reporting and resolution. ***The Committee invites the Government to include in its next report further definitions and methodology and relevant information on any further developments.***

*Article 16. Acceptance of obligations.* The Committee takes note of the Government's reply. ***The Committee would be grateful if the Government would continue to indicate to the ILO, in accordance with Article 16(4), the position of its law and practice in relation to statistics on labour costs and any new development in this respect.***

## Mexico

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1982)**

The Committee notes the comments of 30 August 2011 from the National Union of Federal Roads and Bridges Access and Related Services (SNTCPF), and the Government's report received on 4 September 2012.

*Follow-up to the recommendations of the tripartite committee (representation under article 24 of the ILO Constitution).* The Committee refers to its comments on the Occupational Safety and Health Convention, 1981 (No. 155), and reminds the Government that, in the recommendations approved in March 2009 by the Governing Body regarding the representation made under article 24 of the ILO Constitution concerning an industrial accident that occurred in February 2006 in the Pasta de Conchos mine, the Government was invited, in consultation with the social partners, to continue to take the necessary measures, inter alia, to monitor closely the organization and effective operation of its system of labour inspection taking due account of the Labour Administration Recommendation, 1978 (No. 158), including its Paragraph 26(1) and to review the potential that the Labour Inspection Convention, 1947 (No. 81), provides to support the measures 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 (document GB.304/14/8(Rev.), paragraph 99(6)(b)(iv) and (d)). The Committee draws the Government's attention to the following points in this connection.

*Articles 4 and 5 of the Convention. Organization and effective operation of the labour inspection system as part of the system of labour administration.* In its previous comments, the Committee requested the Government to continue to provide information on the measures taken or envisaged to step up the coordination of the labour inspection system with the system of labour administration, of which it is a part. The Committee welcomes the information sent by the Government reporting the development of an electronic information system (SAPI) for the implementation, follow-up and supervision of inspection visits, which should facilitate the programming of inspections, the creation of indicators and the production of the reports and documents needed to carry out visits. It also notes with *interest* that an inter-institutional grouping, composed of the Ministry of the Economy, the Mexican Social Security Institute (IMSS), the Secretariat of Labour and Social Insurance (STPS), the Office of the Federal Prosecutor for the Protection of the Environment (PROFEPA) and the Office of the Federal Prosecutor for the Defence of Labour (PROFEDET) has been established with a view to exchanging data for the purpose of creating a single directory of mining enterprises, which will facilitate the supervision of safety and health conditions in mines. It also notes the information from the Government to the effect that in May 2012 there were 30,458 mining licences in operation, 2,436 of which were in the State of Coahuila. Of these, 970 were for coalmines. Of the 297 coal pits identified thanks to support from the Mexican Geological Service (GEOINFOMEX), 149 had been inspected at the beginning of September 2012.

The Committee notes in this connection that the SNTCPF draws attention to difficulties in identifying the responsible subcontracted mining enterprise. The SNTCPF also states that the 100 work centres that the Government said would be inspected include not even 50 per cent of the "pocitos" in operation. Furthermore, at the end of August 2012, only 10 per cent of the 100 "pocitos" were actually inspected, which shows the STPS' inability to enforce the obligations incumbent on employers. Consequently, according to the SNTCPF, between the 2010 Conference and September 2011, 33 miners died in industrial accidents.

The SNTCPF refers to a lack of inspection visits to supervise occupational safety and health and accident prevention, failure to apply the principle of reasonable diligence, a lack of human and material resources in the labour inspection services and failure on the part of employers to implement the measures prescribed by the labour inspectorate. The organization also points out the disparity of the criteria applied by labour inspectors in the course of their visits, and a tendency to negligence or bribery where enterprises are in breach of their obligations.

The SNTCPF also objects to the agreements concluded at the "coal summit", which was not attended by any union representatives or representatives of the victims' families. According to the trade union, the proposal the Government made at the summit to devote 50 million Mexican pesos to the purchase of occupational safety and health equipment for the mining enterprises in the region will not solve the problems given the serious hazards of mining in the "pocitos".

The SNTCPF also objects to the amendment, on 11 August 2011, of Official Mexican Standard NOM-032-STPS-2008 on safety in underground coalmines, which allows employers to call on the services of the "verification units". According to the organization, in some cases the units are economically reliant on the enterprise concerned, which bars them from being independent.

The SNTCPF also refers to recommendations 85/2010 and 12/2011 of the National Human Rights Commission, the aim of which is to improve the inspection system.

*The Committee refers the Government to its comments under Convention No. 155 and would be grateful if the Government would send information on the impact of the initiative to strengthen the labour inspection system as part of the system of labour administration, inter alia, by establishing a directory of mining enterprises, including subcontracted enterprises, and the development of the SAPI, in particular in relation to the programming, the conduct of labour inspection visits and their follow-up in the mining sector. The Committee also asks the Government, in consultation with the social partners and the organization for the families of the deceased mine workers in the mine Pasta de Conchos, to continue to take measures to secure close supervision of the organization and effective operation*

of its labour inspection system as part of the system of labour administration, and to continue to provide information on the number of mines inspected.

Furthermore, the Committee would be grateful if the Government would state whether employers' and workers' organizations participate in the "verification units" established by Standard NOM-032-STPS-2008. It also asks the Government to send detailed information on the means available to the STPS to ensure that the "verification units" are operating in accordance with national laws and regulations and are adhering to the objectives assigned to them (Articles 2 and 9 of the Convention).

Articles 5 and 6. *Consultations with the social partners.* The Committee notes the information sent by the Government that the draft reform of the Federal Labour Act submitted in March 2010 provides for a significant increase in the amounts of fines and for the federal labour inspectorate to be empowered to close a workplace where it detects dangers and risks to the physical integrity of the workers. **The Committee would be grateful if the Government would keep the ILO informed of any progress made in the adoption and implementation of this draft. It also asks the Government to indicate the most representative organizations of employers and workers that were consulted on the drafting of the reform of the Federal Labour Act and the amendment in 2011 of Standard NOM-032-STPS-2008.**

Articles 5 and 8. *Consultations with the social partners on the national policy concerning international labour affairs.* The Committee previously urged the Government to examine, in consultation with the workers' and employers' organizations, the potential the Labour Inspection Convention, 1947 (No. 81) would provide to support the measures the Government was adopting to improve application of the legislation on health and safety in mines. The Government indicates that, in accordance with article 19 of the ILO Constitution, the Convention was submitted to the competent authority in 1950 with a view to ratification, but the authority in question gave a negative opinion on the ground that the national laws and regulations were not consistent with Articles 3 and 6 of the Convention. The Government further states that, as it informed the ILO in 2008, 2009, 2010 and 2012, it does not envisage ratifying the Convention since the situation has not changed as far as the national legislation is concerned. The Committee notes that in its comments, the SNTCPF regrets that the Government has not taken a decision regarding the ratification of Convention No. 81.

**The Committee requests the Government to indicate the most representative organizations of employers and workers that were consulted during the recent discussion of the possibility of ratifying Convention No. 81, and to provide detailed information on the results of the consultation.**

Article 10 of the Convention and Paragraph 26(1) and (2)(a) and (b) of the Labour Administration Recommendation, 1978 (No. 158). *Human resources and material means made available to the labour inspectorate as part of the labour administration system. Regional or local bodies, human resources and material means.* The Committee notes with *interest* that a labour secretariat has been created in the State of Coahuila and that it went into operation in December 2011. It also notes that an agreement providing for specific safety and health measures has been concluded between the new secretariat and the government of the State of Coahuila. **The Committee requests the Government to provide information on how the creation of the secretariat has affected the operation of the labour administration system, and particularly on the labour inspection system in connection with the application of the legislation on safety and health and the prevention of industrial accidents, particularly in underground coalmines and "pocitos". It also asks the Government to specify the objectives of the abovementioned agreement and its early effects in terms of attaining the objectives.**

*Increase in the number of inspectors' posts.* The Committee also notes the information supplied by the Government that, thanks to the measures it has taken to increase the number of posts for federal inspectors and experts (*personal dictaminador*), the federal budget for 2012 authorized the creation of 400 new posts for federal inspectors. The number of labour inspectors, which stood at 376 in 2011, thus rose to 776 by early September 2012, and the Coahuila coalfield, which had ten inspectors in 2010, now has 25. **The Committee requests the Government to indicate whether these labour inspectors have already reported for duty, to specify the number of inspectors who perform safety and health supervisory duties, particularly in mines, and to provide details of the duties performed by experts (personal dictaminador), the number and geographical distribution of the experts and their areas of specialization.**

*Inspectors' training.* The Committee also notes the information supplied by the Government on various training courses organized for labour inspectors which covered mining among other subjects. It further notes that 11 federal inspectors were certified by the STPS under the competency standard "Monitoring observance of occupational safety and health standards". **The Committee would be grateful if the Government would provide further details of this certification, describing how the certification and the courses available to labour inspectors affect their qualifications and skills, particularly in the area of safety and health in mines.**

*Material resources.* The Government also mentions the material means made available to labour inspectors in the State of Coahuila (telephone hotline for complaints, production of a guide on evaluating the application of safety and health standards for small-scale coalmines, provision of laptops and cellphones for all labour inspectors, and access to a van). **The Committee requests the Government to describe the material means, including means of transport and safety equipment, available to inspection staff for the performance of their duties, particularly in underground coalmines and "pocitos".**

*Part IV of the report form and Paragraphs 20 and 25(2) of Recommendation No. 158.* The Committee observes that the Government has not sent the statistical data (annual report) requested on the inspection activities carried out in the mining sector, particularly in coalmines. It nonetheless notes the tables included in the report on Convention No. 155 giving statistics of “major accidents in the mining industry” that occurred between 16 February 2006 and 18 May 2012, and on occupational hazards broken down by economic activity for 2010. ***The Committee again asks the Government to provide copies of the periodical reports produced by the labour inspectorate as part of the labour administration system, containing statistical information on the inspection activities carried out in the mining sector, particularly in coalmines.***

*[The Government is asked to reply in detail to the present comments in 2014.]*

## Niger

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)**

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 provides information on the provisions of the national legislation vis-à-vis the provisions of the Convention. It notes in particular that, under *Article 11 of the Convention* concerning working conditions as well as logistical and material resources of labour inspectors, the Government indicates that, in the event of labour inspectors incurring expenses as part of their displacement or the performance of their duties, the costs are reimbursed through the national budget. However, it states that some inspectors do not even have a vehicle to carry out visits and usually perform requisitions. In addition, under *Part IV of the report form* for the Convention, the Government states that the general difficulties related to the implementation of the Convention lie within the limited human, material and logistical resources available to labour inspectors and to the National Labour Directorate resulting in the impairment to effectively fulfil their mission.

In its previous comments, the Committee had referred on several occasions to the findings of the high-level investigation mission carried out by the Office from 10 to 20 January 2006 (in the context of controlling the implementation of the Worst Forms of Child Labour Convention, 1999 (No. 182)), which highlighted the fact that the Labour Inspectorate was “severely deprived of material and humane means necessary to accomplish its various missions”, and recommended an audit of that institution to determine the exact nature and extent of needs in this area and considered that, once that was done, the Government would work with support from the ILO and that of other UN agencies and interested donors in order to mobilize resources.

In its report received in 2009, the Government committed itself to trying to make every effort to ensure that the audit would take place as soon as possible and to inform the Office of any developments in this regard. The Committee notes that the Government has not taken the measures in question but that, in response to the observation of 2010 on the need for an audit, while referring to the poor conditions within the labour inspection services, it has formally requested support and assistance from the ILO in order to strengthen the operational capabilities of its inspection services and address particular mining prospects.

The Committee must draw the Government’s attention to the fact that the establishment of a labour inspection system meeting the socio-economic objectives covered by the Convention should take in due account the measures recommended by the Commission particularly in its General Survey of 2006 on labour inspection and in its general observations of 2007 (the need for effective cooperation between the labour inspection services and the judiciary), of 2009 (the availability of statistics on industrial and commercial establishments liable to labour inspection and the number of workers covered as baseline information for assessing the implementation of the Convention in practice) and of 2010 (the publication and content of an annual report on the functioning of the labour inspection). In the absence of basic information on the functioning of the labour inspection (statistics on labour inspection activities and their results, geographical distribution of industrial and commercial undertakings covered by the Convention and workers occupied therein), the Committee is not in a position to assess the effect given in practice to the Convention or to the relevant national legislation.

***Consequently, the Committee hopes that the Government’s request for ILO support in order to establish, in law and in practice, a labour inspection system as prescribed by the Convention will be satisfied rapidly and requests the Government to take, in consultation with organizations of employers and workers and in cooperation with the ILO Office in the region, the necessary measures for this purpose. The Committee requests the Government to keep the Office informed of the progress achieved and any difficulties encountered.***

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

## Norway

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

The Committee notes the comments by the Confederation of Norwegian Business and Industry (NHO) of September 2011, received with the Government’s report on 18 April 2012.

*Articles 6, 13 18 and 24 of the Convention. Labour inspection activities in agriculture.* The Committee notes the comments made by the NHO indicating that the number of inspection visits in agriculture has increased following the declaration of a collective agreement in agriculture in 2010 as being generally applicable. It notes that the inspections were aimed at controlling wage levels to prevent “social dumping”. However, only a few breaches concerning wage conditions were detected, while some general injunctions in the area of occupational safety and health (OSH) were made. The Committee also notes the information provided by the NHO that, in 2009, the Norwegian Agricultural Employers Association started a pilot project entitled “The farmer as employer (of foreign workers)”, which ended in May 2011, although the intention is to follow it up. As Norwegian agriculture consists of many very small units and the farmers often

have little experience of being employers, and consequently also have little knowledge of legal and contractual matters, the objective of the project was to make the farmers more aware of their responsibilities as employers and to increase their knowledge of legal and contractual matters. According to the NHO, this should lead to better working conditions in agriculture, including in the area of OSH. The Committee also notes the information provided on the website of the National Labour Inspectorate concerning the rights and duties of migrant workers, including the terms and conditions of employment, and pay and working hours in agriculture. ***The Committee invites the Government to provide information on the impact of the increased inspections and awareness-raising activities in collaboration with the social partners in the agricultural sector on conditions of work and the number of occupational accidents and diseases in this sector. In particular, the Committee asks the Government to provide statistics on the infringements registered, the sanctions imposed and the injunctions ordered by labour inspectors.***

*Articles 13 and 19. 1. Collaboration between the labour inspectorate and the social partners.* The Committee takes note of the information provided by the NHO on the conclusion of a protocol by the social partners in agriculture for the conduct of an OSH campaign in agriculture, aimed at reducing the number of occupational accidents and diseases, to be implemented by the “OSH service for agriculture”. This project will be financed by the social partners in agriculture and by private actors. This project is also anchored in the “National Cooperation Forum for OSH in Agriculture” which is chaired by the Minister of Food and Agriculture. Furthermore, the Committee notes that the NHO refers to the plan to establish an OSH committee, which will be modelled on the committees already existing in forestry and fisheries, and which will begin working this year. ***The Committee invites the Government to provide detailed information on the above projects (activities carried out and impact of these activities on the conditions of work in agriculture and the number of occupational accidents and diseases in this sector, etc.), as well as on the contribution or participation of the labour inspectorate in this regard. Please also provide information on the mandate and composition of the “OSH service for agriculture” and the OSH committee.***

*2. Notification of industrial accidents and cases of occupational disease.* In relation to the progress made with the establishment of a special module for the recording of occupational accidents as part of the national database on accidents and injuries, the Committee notes the Government’s indication that the module is expected to be fully implemented in the near future. Furthermore, in relation to the progress made with the establishment of an electronic reporting system for occupational accidents and diseases known as “Health Net”, the Government refers to technical difficulties, but indicates that work is continuing for its establishment in collaboration with the Norwegian Medical Association and the Ministry of Health. Following up to its previous comments in this regard, the Committee also notes that the copy of the document on the mandatory quality management system, including occupational safety and health aspects, established by the Norwegian Agricultural Cooperation and client companies of agricultural undertakings, which the Government indicates as being attached to the report, has still not been provided. ***The Committee hopes that the Government will be able to inform the ILO in the near future of progress achieved in terms of the provision to the labour inspectorate of data on occupational accidents and diseases and its impact on activities for the prevention of occupational risks in workplaces and their results.***

***The Committee once again asks the Government to provide a copy of the document relating to the mandatory quality management system, including occupational health and safety aspects, established by the Norwegian Agricultural Cooperation and client companies of agricultural undertakings.***

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 reply of 12 March 2012 in response to the comments provided by the Pakistan Workers Confederation (PWC), which were received on 21 November 2011.

*Articles 1, 2, 3(1)–(2), 6, 7, 9, 10, 11, 12, 16, 17, 20 and 21 of the Convention.* ***Implementation of a new labour inspection policy and revision of labour laws.*** The Committee notes the information provided by the Government in response to the comments of the PWC on the implementation of a labour inspection policy, which had been developed in the 2006 and 2010 documents on labour inspection policy. In particular the 2006 document envisaged various measures, including the establishment of computerized registries, the implementation of the “one inspector, one enterprise” approach, capacity building for labour inspectors, the increase in preventive measures, the introduction of risk assessment and the recruitment of qualified technical experts. The Government indicates that, following a constitutional amendment, the subject of labour has been delegated to the provincial legislative powers. The Committee notes that the concurrent list of legislative powers in schedule IV of the Constitution, which had displayed labour as a concurrent subject, was declared void, along with the 18th Constitutional Amendment of 2010. The Government further notes in its report that the provinces are about to adopt labour legislation and are drafting new labour laws, in accordance with their own local requirements, including in the field of occupational safety and health (OSH) and the rationalization of their labour laws in the context of the ILO Decent Work Country Programme (DWCP). It adds that the provinces are consequently responsible for the adoption or implementation of all measures in connection with the 2006 and 2010 documents on labour inspection

policy. Furthermore, under the terms of the 18th Constitutional Amendment, there will be a coordination mechanism at the federal level, replacing the national inspection authority that had previously been planned.

*The Committee would be grateful if the Government could clarify the extent to which the provinces, following the Constitutional Amendments of 2010, are still subject to legally binding guidance given at the federal level in the field of labour, including on labour inspection, and the extent to which competence in the field of labour in this respect will remain at the federal level.*

*The Committee asks the Government to specify the implementation measures that have been taken at provincial level with regard to the subjects and points raised by the Committee previously in relation to the 2006 and 2010 labour inspection policy documents and if so to specify those measures.*

*It would be grateful if the Government could provide copies of any labour laws adopted in the provinces and indicate any other legal texts which, in accordance with Parts I and II of the report form, implement the provisions of the Convention at the provincial level. It finally requests the Government to provide information on the mandate and operation of the coordination mechanism at the federal level, and any institutional arrangements envisaged and/or created in this respect.*

The Committee notes with *interest* the information provided by the Government in response to the longstanding concerns raised by the PWC in relation to the cession of labour law enforcement in the provinces of Punjab and Sindh. The PWC alleged that their labour inspection system became inoperative following the adoption of restrictive policies in these provinces, under which labour inspection visits required prior permission by the employer concerned, and that inspections had been abandoned in favour of an exclusively voluntary self-declaration mechanism. The All Pakistan Federation of United Trade Unions also drew attention in previous comments to the restricted inspection policy at the federal level, including the banning of inspection in industry by the previous Government, thus causing an increase in child labour.

The Government explained in its report that inspection had been banned in the industrial units of Punjab under the Punjab Industrial Policy 2003, which had introduced the procedure of self-declaration for employers. However, this procedure did not appear to be achieving the desired results, due to a lack of cooperation from employers. Finally, the Government transmitted to the Office a notification from the Punjabi Government and indicated that the Government of Punjab had withdrawn the Punjab Industrial Policy 2003, thus allowing regular inspections once again. The Government adds that the Government of Punjab organizes seminars, in collaboration with local chambers of commerce, to highlight the benefits of inspection under various labour laws.

*The Committee asks the Government to clarify whether the restrictive policy banning labour inspections has also been abandoned in the province of Sindh and/or in other provinces, and if not, to indicate the measures taken at the competent level to bring the labour inspection policy into line with the requirements of the Convention so that labour inspectors can perform their duties in accordance with the provisions of the Convention.*

*Parts I and II of the report form. Implementation of the Convention at the provincial level.* The Committee notes the brief description of the labour inspection system in the provinces of Punjab and Sindh provided in reply to its previous comments. It notes the division of competencies between labour inspectors and labour officers, which may vary according to the undertaking liable to inspection, and the indications concerning the hierarchy of labour inspection staff.

*Noting that the Amendment to the Constitution may result in changes in the organization and legal framework applicable to the labour inspection system in the provinces, the Committee expresses its wish to receive more information, in accordance with Parts I and II of the report form, including, but not limited, to:*

- *the organizational structure (if possible with an organizational chart) and administrative arrangements; the central authority at the provincial level competent for labour inspection in each province;*
- *the legislative framework for labour inspection at the provincial level, including any laws on labour inspection, concerning the status, powers and obligations of labour inspectors in each province;*
- *statistics on the number of labour inspection staff per office in each province; and*
- *the material means available, such as office facilities, means of transport, for inspections and applicable reimbursement rules.*

*Articles 20 and 21. Publication of an annual inspection report.* The Committee recalls its longstanding comments in which it emphasized the need to publish an annual inspection report. It recalls in this respect that the regular communication of the annual report to the Office enables the ILO supervisory bodies to assess the performance and difficulties that arise in establishing and implementing the labour inspection system, and to support the Government's efforts to meet the objectives laid down in the ILO's instruments. It also recalls that the annual report provides the social partners, and public and private bodies concerned, with the opportunity to better understand the work and objectives of the labour inspectorate, as well as the problems it faces, and to contribute their views on how it could be improved (General Survey on labour inspection, 2006, paragraphs 331 and 332). In its previous comments, it also requested information on the extent to which tools for the registration and processing of the relevant data (e.g. enterprise registries) were implemented. The Government indicates in this respect that the Chief Inspectors of Factories in the provinces maintain a register of enterprises, and that provincial Governments are advised to publish inspection reports annually. In addition, it



provides statistics on factory inspection, the warnings issued and the number of prosecutions by district. *The Committee asks the Government to take the necessary steps to ensure that annual inspection reports are published by each province containing detailed and up-to-date information on the subjects covered by Article 21.*

## Panama

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)**

The Committee notes the new comments made by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) in a communication dated 24 August 2012. The Committee notes that these comments mainly concern the issues that were the subject of its previous observation. They also refer to the drop in the number of labour inspectors and the low pay they receive.

Noting that the Government has not replied to its previous observation, the Committee is bound to repeat it as follows:

The Committee notes the comments made by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) on the application of the Convention, dated 25 August 2011, as well as the Government's reply dated 8 November 2011.

*Articles 3(1), 6, 7, 10, 15(a), 16, 17 and 18 of the Convention. Comments of trade union organizations.* According to the FENASEP, labour inspectors do not enjoy the stability or independence, which they should be assured of under the Convention in accordance with *Article 6* of the Convention, as they are employees which are subject to free appointment and removal from office. The trade union indicates that, in view of their status, the Labour Ministry has dismissed more than 90 per cent of the labour inspectors appointed by the previous Government without providing any reasons, while the previous Government had in turn dismissed the labour inspectors appointed by the former Government. The FENASEP also alleges that the new labour inspectors were appointed on the basis of political affiliation and not for their competency or merit and that they do not have the required knowledge for the performance of their duties, but that they nevertheless receive higher wages than their predecessors. Furthermore, according to the FENASEP, labour inspectors do not receive adequate training and, although their number has been recently increased, they are not sufficient, in view of the number of complaints received and the number of enterprises registered. The trade union also reports the absence of manuals on inspection procedures and protocols and alleges that labour inspectors engage in practices that are not in line with ethical standards. In addition, the FENASEP indicates that higher authorities in the Ministry have the discretion to decide in each case on who will be inspected, warned or punished.

The Government, in reply to these allegations, indicates that the 134 inspectors currently working at the Ministry of Labour and Employment Development (MITRADEL) are all civil servants and that 25 per cent of them were appointed under past administrations. The grounds for termination of the staff is that 70 per cent of them did not meet expectations set for the performance of their functions, 5 per cent were dismissed for breach of internal rules or misconduct, whereas 20 per cent resigned and 5 per cent left office without justification. The Government adds that the selection of inspectors is carried out in conformity with the requirements prescribed in the handbook of procedures of the Ministry, denies that the new inspectors have higher wages than the previous ones and explains that the new appointments were made to fill vacant posts with the same wages. It also states that the Institutional Human Resources Office and the National Directorate of the Labour Inspectorate have carried out jointly national training days for their staff on topics such as drawing up of technical reports, the discharge of their duties, the organization of the public sector, alternative means of conflict resolution, reports intended for inspectors and security officers, among others. In addition, the National Directorate of the Labour Inspectorate received technical assistance from specialists of the Spanish Labour Ministry with the support of the Programme for the Strengthening of Labour Institutions (FOIL) and the Spanish Cooperation Agency. According to the Government, the National Directorate of the Labour Inspectorate developed, in coordination with the Institutional Planning Office of the MITRADEL, a handbook on procedures, which describes the functions of the departments of the labour inspection services and the different steps to be followed for routine and scheduled inspections. In addition, labour inspectors, prior to taking up their functions, receive training on questions relating to ethical conduct in the public sector and the sanctions applicable for serious misconduct.

The Committee recalls that, in conformity with *Article 6* of the Convention, the inspection staff shall be composed of civil servants 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. It draws the Government's attention to paragraphs 202 to 204 of its 2006 General Survey on labour inspection, where it emphasized that labour inspectors cannot act in full independence, as required by their functions, if their service or their career prospects depend on political considerations and that it is vital that the levels of remuneration and career prospects of inspectors are such that high-quality staff are attracted, retained and protected from any improper influence. It has emphasized, that as public servants, labour inspectors are generally appointed on a permanent basis and can only be dismissed for serious professional misconduct, which should be defined in terms that are as precise as possible to avoid arbitrary or improper interpretations. Therefore, a decision to dismiss an inspector, like any other decision to apply a sanction with serious consequences, should be taken, or confirmed, by a body offering the necessary guarantees of independence or autonomy with respect to the hierarchical authority and in accordance with a procedure guaranteeing the right of defence and appeal.

The Committee further draws the Government's attention to the fact that, in conformity with the requirements of *Article 7* of the Convention, labour inspectors should be recruited with sole regard to their qualifications and should be adequately trained for the performance of their duties and that *Article 15(a)* of the Convention provides that labour inspectors are prohibited from having any direct or indirect interest in the enterprises under their supervision.

*The Committee therefore requests the Government to provide clarifications on the reasons for the removal of 70 per cent of the civil servants, who were considered not to meet the performance expectations, and those 5 per cent, who were dismissed for breach of internal rules or misconduct, and to indicate the relevant legal provisions, whether any appeals have been lodged in this framework and their outcome.*

*The Committee would also be grateful if the Government would provide clarifications on the possible reasons for the resignation or departure of 25 per cent of labour inspection staff as well as on the measures taken or envisaged to retain*

qualified and experienced staff, (improvement of career prospects and their wage scales, notably in relation to other comparable categories of public officials) and on the safeguards of independence of labour inspectors.

*The Committee also requests the Government to transmit the Code of conduct to be observed by inspectors in the discharge of their functions and the texts applicable in the event of non-compliance with this Code, and to indicate the relevant sanctions.*

*The Committee would also be grateful if the Government would provide information on the conditions and procedures for the recruitment of labour inspectors as well as the measures taken or envisaged in order to ensure that they are adequately trained on a regular basis, both when they enter the service as well as in the course of their employment, to enable them to perform their duties effectively (Article 7).*

*The Committee further requests the Government to communicate the text of the handbook on procedures developed by the National Directorate of the Labour Inspectorate in coordination with the Institutional Planning Office of the MITRADEL as well as to provide data on inspections (routine inspections and inspections as a result of a complaint, frequency of inspections performed in the same undertaking, scope of inspections), the violations detected by inspectors (and the legal provisions to which they relate) and the sanctions imposed, as well as the number of workplaces liable to inspection and the number of workers employed therein.*

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 future.*

## Paraguay

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

*Articles 3(1), 5(a), 20 and 21 of the Convention. Failure to submit an annual report on the labour inspection activities. Absence of information on the establishment of a register of employment relationships.* The Committee notes with **regret** that since the ratification of the Convention in 1967, the Government has never sent a complete annual labour inspection report to the Office as required by *Articles 20 and 21* of the Convention. Moreover, the Government's latest report does not contain the information previously requested by the Committee on the implementation or impact of Decree No. 580/2008 which requires all employers to register employment relationships in the Unified System of Business Registration (SUAE), a database which is to be shared by several governmental institutions.

*The Committee urges the Government to ensure that the necessary measures are taken by the labour inspection authority with a view to the preparation, publication and communication to the ILO of an annual labour inspection report under Article 20 of the Convention containing information on all the subjects covered by Article 21(a)–(g). In this regard, and with reference to its general observations of 2009 and 2010, the Committee once again asks the Government to provide information on the progress made in the implementation of Decree No. 580/08 and on the establishment of the SUAE, as well as the latter's impact on the activities of the labour inspection, in relation to ensuring the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work (Article 3(1)).*

*Regional cooperation and other efforts to enhance coordination and coherence.* The Committee notes that the Government's report contains the text of an audit carried out in 2010 by the United Nations Development Programme (UNDP) on the role and sanctioning system of the public inspection services (hereinafter the "2010 audit"), which, while pointing to a number of problems in the labour inspection system relevant to the application of the Convention, also notes that joint inspection visits in border areas between Argentina, Brazil, Paraguay and Uruguay organized within the framework of the Common Market of the Southern Cone (MERCOSUR), have contributed to the implementation of unified criteria for inspection procedures in these countries. The Committee also notes that the Government has requested assistance in the framework of a partnership agreement between the ILO and the Government of Brazil for the promotion of South–South cooperation in Latin America, aimed at extending social security coverage in the country. In this context, it was envisaged inter alia to establish a forum of inspectors from the different inspection services for the coordination of their work (including through biannual meetings, but more importantly through internet and telephone contacts) and the design of model reports for easy reference on issues of interest to the respective governmental institutions. *The Committee would be grateful if the Government would provide information on the impact of international cooperation within the framework of MERCOSUR in relation to the discharge of the labour inspectors' preventive and enforcement duties in the area of conditions of work and the protection of workers. Noting that the Government has requested technical assistance in the framework of the partnership agreement between the ILO and the Government of Brazil, the Committee invites the Government to take formal steps in this regard and to keep the Office informed.*

*Articles 6, 10 and 16. Number and conditions of service of labour inspectors and number of inspection visits.* The Committee notes that, according to the Government, the number of labour inspectors decreased from 34 in 2009 to 31 in 2011 and the number of inspection visits fell from 1,641 in 2009 to approximately 1,204 in 2010. Moreover, according to the Government, while the proportion of labour inspectors who are permanent officials has now increased from 85 to 93.5 per cent, their level of remuneration remains very close to the legal minimum wage. *The Committee reiterates its request for the necessary measures to be taken so as to improve the conditions of service of labour inspectors and controllers (increased remuneration, or at least adaptation to the level of other inspectors discharging similar functions, and improved career prospects, including variations in remuneration based on education, training, merit or*

length of service). *It requests the Government to indicate any measures taken or envisaged to increase the number of labour inspectors, with a view to ensuring that workplaces are inspected as often and as thoroughly as necessary.*

*Article 7(3). Training of labour inspectors.* The Committee notes that the Government does not provide information on any measures taken to improve the initial and subsequent training of labour inspectors, as previously requested. *It therefore once again requests the Government to take measures to improve the initial training provided to labour inspectors to enable them to carry out their duties as effectively as possible and to offer them subsequent training in the course of employment thereby updating their knowledge and skills and allowing them to adapt to technological or other developments in the world of work.*

*Furthermore, the Committee once again requests the Government to provide a copy of the labour inspection manual produced in cooperation with the trade unions: the Paraguayan Central of Workers (CPT), the National Union of Workers (CNT) and the Single Confederation of Workers (CUT); and employers' organizations: the Industrial Union of Paraguay (UIP) and the Federation of Production, Industry and Commerce (FEPRINCO).*

*Article 11. Material and logistical means available to the labour inspectorate.* The Committee notes that the Government reports some improvements in the material and logistical resources available to labour inspectors (purchase of seven computers and printers and installation of a telephone line). *The Committee asks the Government to continue providing information on any measures taken to improve the material and logistical resources available to labour inspectors, which the Government describes as scarce.*

*Articles 12(1)(a) and (2)(c), and 15. Restrictions on the initiative of inspectors to enter freely workplaces liable to inspection.* The Committee notes that Decision No. 1278 of September 2011, which is attached to the Government's report, still requires a formal authorization of inspection visits through an inspection order to be issued by the Deputy Minister of Labour and Social Security and the Director-General for Labour "where appropriate". It recalls that it has been raising this issue for a number of years in its comments under *Articles 12 and 15. The Committee once again urges the Government to take the necessary measures, including the amendment of Decision No. 1278 of September 2011, to ensure that inspectors are empowered both in law and in practice to enter freely at any hour of the day or night any workplace liable to inspection, as provided in Article 12(1)(a) of the Convention and that the requirement of prior authorization of inspection visits is brought to an end.*

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

## Poland

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)**

The Committee notes the Government's detailed report received by the ILO on 28 August 2012, as well as the annual reports of the National Labour Inspectorate for 2009, 2010 and 2011. It also notes the Act on the effects of employing foreigners who are illegally resident in the territory of the Republic of Poland of 6 July 2012, attached to the Government's report. According to the Government, the Act implements Directive 2009/52/EC and provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals and introduces new Regulations that de facto serve to protect the rights of foreign nationals. The Committee will examine the Government's report as soon as a translation of this Act is available in one of the working languages of the ILO.

The Committee further notes the comments made by the independent and self-governing trade union "Solidarnosc" in a communication dated 30 August 2012 and received by the ILO on 3 September 2012. *While awaiting the translation of the above Act, the Committee asks the Government to make any comments it deems appropriate in relation to the comments made by the "Solidarnosc".*

## Russian Federation

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1998)**

*Parts I and V of the report form. Legislation and general appreciation of the application of the Convention.* The Committee notes that following a restructuring in 2004, the labour inspectorate has been operating within the Federal Service on Labour and Employment (Rostrud) established under the auspices of the Ministry of Health and Social Development. In reply to the Committee's previous requests, the Government indicates in its latest report, that Rostrud operates in the framework of the National Labour Code, the Code of Administrative Offenses, the Federal Law No. 134-Ø3 of 8 August 2001 on the protection of the rights of legal entities and individual entrepreneurs during inspections, Governmental Decree No. 324 of 30 June 2004 on the status of the Rostrud and Governmental Decree No. 156 of 6 April 2004 on the model regulations for territorial authorities of the Rostrud, approved by Ministerial Order No. 378n of July 2009, and the regulations for the territorial authorities of the Rostrud relating to state labour inspections in the constituent units of the Russian Federation. *The Committee asks the Government to provide an organizational chart of the labour inspection system and, once again, to:*

- (a) *provide a copy of the above documents of a legislative, regulatory or administrative nature relating to the matters covered by the Convention (including a copy of the current version of Governmental Decree No. 324 on Rostrud,*

*the model regulations for territorial authorities of the Rostrud, approved by Ministerial Order No. 378n of July 2009, the regulations for the territorial authorities of the Rostrud relating to state labour inspections in the constituent units of the Russian Federation and of any applicable texts setting out the functions of labour inspectors);*

- (b) give a general appreciation of the manner in which the Convention is applied, including, for instance, extracts from official reports and information on any practical difficulties encountered in its application; and*
- (c) indicate whether employers' and/or workers' organizations have made any comments on the application of this Convention and, if so, transmit them to the ILO.*

*Articles 2(1), 3(1), 16, 17 and 23 of the Convention. Labour inspection activities relating to the protection of workers.* The Committee notes the reference in the Government's report to the cases of child labour detected, although it does not provide any statistics or information on the activities of the labour inspection services in this regard. The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2758 (365th Report, November 2012) relating to the investigation of anti-union persecution by the competent authorities including the labour inspectorate, in the Russian Federation, as well as the decision of the European Court of Human Rights in *Rantsev v. Cyprus and Russia* (Application No. 25965/04) on the obligation to prevent trafficking and protect victims, including the obligation to investigate situations of potential human trafficking. ***The Committee requests the Government to indicate the measures taken to enforce the legal provisions pertaining to fundamental rights at work, including equality and non-discrimination, freedom of association, the eradication of forced labour practices and child labour, as well as the results achieved. Please also include relevant statistics in the annual report of the labour inspectorate.***

*Articles 3(1), 8, 10, 11 and 16. Number and functions of labour inspectors, material resources at their disposal, and impact of the labour inspection system.* The Committee notes from the information provided in the activity report of the Rostrud for 2010 (available in Russian on its website [www.rostrud.ru](http://www.rostrud.ru)), that of the 3,666 people that worked within the services of the Rostrud as at 31 December 2010, 2,852 were officials authorized to carry out state supervision and control over observance of laws and regulations on labour, i.e. 1,251 labour inspectors in the area of labour legislation and 1,601 in the area of occupational safety and health (OSH). These labour inspectors carried out a total number of 183,435 inspections of which 89,000 related to OSH.

The Committee notes with ***interest*** that the Government's report refers to the positive impact of the work of the federal labour inspection service on the overall state of compliance with the requirements of labour law in workplaces. For instance, according to the Federal State Statistical Service (Rosstat), on 1 January 2011 the total outstanding wage arrears amounted to 2.4 billion roubles (RUB), a drop of RUB 827 million or 25.6 per cent, by comparison to 1 December 2010, and almost 33 per cent by comparison to the beginning of 2010. The Government emphasizes that this is the lowest recorded figure for wage arrears in the Russian Federation for the past ten years and adds that in 2010, employers had settled wage arrears owed to 632,000 workers, amounting to over RUB9 billion. Positive trends were also noted in the absolute numbers of serious accidents at work, including fatal accidents which decreased to a total of 10,295 in 2010 from 10,809 in 2009. The total number of fatalities fell by 2.5 per cent. Employers rescinded 1,543 unlawful dismissals and over 2,300 unlawfully imposed disciplinary sanctions. Over 2,000 sets of equipment were stopped and 170 workplaces were temporarily shutdown pending correction for defects posing a risk to workers' lives and health. The relative number of breaches of labour law identified by inspectors on average during a single inspection fell by 11.5 per cent in 2010 by comparison to 2009, which can be seen, according to the Government, as a positive sign of the effectiveness of the steps taken to prevent infringements of the law in the workplace.

The Committee also notes, however, that the number of labour inspectors appears to have decreased by 14 per cent since 2003, and by 31 per cent since 1995 while the total number of undertakings liable to inspection amounted to 8,171,000 in 2010, which means that the workplaces actually inspected were 2.4 per cent of the total. Moreover, the material resources (e.g. 324 cars) available for the 82 regional inspection offices throughout the country do not appear to be sufficient for the effective discharge of the functions of the labour inspection, especially in remote regions.

***In the light of the important socio-economic role performed by labour inspection and the positive results produced during the reporting period, the Committee would be grateful if the Government would provide detailed information on any steps taken or envisaged in order to meet the needs of the labour inspection system in terms of human resources in the light of the number of workplaces liable to inspection and the number of workers employed therein and to provide further information on the category, geographical distribution, fields of specialization of labour inspectors in service. Finally, the Committee once again requests the Government to indicate the proportion of women in the labour inspection staff at all levels of responsibility and, where appropriate, the special tasks assigned to men and women inspectors, respectively.***

***The Committee also requests the Government to indicate any measures taken or envisaged in order to improve the material resources at the disposal of labour inspectors, in particular transport facilities to enable the effective inspection of remote workplaces. It also requests the Government once again, to communicate any legislative text concerning the reimbursement to labour inspectors of travel expenses incurred in the performance of their duties, as well as a copy of a reimbursement form and information on the average length of procedures for reimbursement.***

*Article 3(1)(b). Preventive activities by the labour inspection services.* The Committee notes with **interest** the reference in the Government's report to various activities relating to the provision of information and advice on labour legislation and labour rights by the labour inspection services of the Rostrud throughout its territorial structure to citizens, employers and workers and their organizations, the public administration and the public at large. In this regard, the Government refers, for example, to the provision of advice through a dedicated hotline, the conduct of a very large number of symposia, periodic campaigns and awareness-raising activities on current issues through media and modern technologies and online conferences. It also notes that workers and employers may post questions and receive detailed answers on the website of the Rostrud. **The Government is asked to provide details on the preventive activities carried out by the labour inspection services, especially vis-à-vis small and medium-sized enterprises, including information on the number of questions answered, the subjects covered and the impact of these activities on compliance with the legal provisions relating to conditions of work and the protection of workers.**

*Article 3(2). Additional functions entrusted to labour inspectors.* The Committee notes that under the terms of Governmental Decree No. 324 of 30 June 2004 on the status of the Rostrud, the Rostrud is entrusted with multiple functions, among others, with the provision of services in the areas of employment promotion, protection from unemployment and "internal migration" as well as the settlement of collective labour disputes. The Committee refers to paragraph 69 of its 2006 General Survey on labour inspection where it underlined that the primary duties of inspectors are complex and require time and resources; in this respect, *Article 3(2)* stipulates that any further duties which are entrusted to labour inspectors should not be such as to interfere with the effective discharge of their primary duties (enforcement and advice). **The Committee would be grateful if the Government would provide clarifications on the functions carried out by labour inspectors and, in particular, whether they are entrusted with additional tasks other than those relating to advisory and enforcement functions as provided for in Article 3(1)(a) and (b) of the Convention, such as for instance, "internal migration", protection from unemployment and the settlement of collective labour disputes. If that is the case, the Committee requests the Government to indicate any steps taken or envisaged to dissociate these functions from the primary duties of labour inspectors so that they can devote themselves more fully to securing the enforcement of legislation on conditions of work and the protection of workers.**

*Articles 5(a), 17 and 18. Cooperation with the justice system and enforcement of penalties for violation of legal provisions enforceable by labour inspectors.* The Committee notes from the Government's report that a large number of cases submitted to the Public Prosecutor's Office by the labour inspection (14,700 in 2008 and 12,700 in 2010) related to sections 143, 145 and 145.1 of the national Labour Code concerning industrial accidents resulting from negligence of provisions on protective measures, non-payment of wages and other benefits, and dismissal of women protected by provisions on maternity. Nevertheless, the Committee notes a discrepancy between the cases reported, the criminal investigations initiated and the number of convictions pronounced. In 2008, for instance, 13,756 cases reported on investigations on industrial accidents resulted in 277 criminal investigations and the conviction of 50 persons; 924 cases on the non-payment of wages or other benefits resulted in 23 criminal investigations and the conviction of eight persons.

The Committee further notes in this regard that despite its repeated requests since 2004, the Government has still not sent a copy of any legal provisions adopted for the implementation of sections 362 (responsibility for infringements of the labour legislation), 363 (responsibility for obstructing the activities of state labour inspectors) and 419 (types of responsibility for infringement of the labour legislation) of the national Labour Code.

**With reference to its general observation of 2007, where it emphasized the importance of effective cooperation with the justice system in order to achieve the effective enforcement of the legal provisions relating to conditions of work and the protection of workers as required by Article 3(1)(a) of the Convention, the Committee asks the Government to describe the procedure to be followed by labour inspectors in the case of detected violations of labour legislation, particularly in relation to wage payment, OSH and non-discrimination and to indicate any steps taken or envisaged so as to enhance the cooperation between the labour inspection services and the judicial authorities. It also once again requests the Government to provide a copy of any relevant legislative texts in their current versions, including the previously requested texts adopted for the implementation of sections 362, 363 and 419, and to specify the sanctions applicable for violations of labour law provisions.**

*Article 12(1)(c)(i). Investigation powers.* The Committee notes that the Government does not provide a reply to its previous comments on this question. In its previous report, the Government had indicated that, pursuant to section 357 of the Labour Code, labour inspectors have the right to interrogate, alone or in the presence of witnesses, the employer or his/her representative on any matter related to the labour inspector's visit and that according to section 229 of the Labour Code, staff may be interrogated only in case of the investigation of accidents at the workplace. The Committee once again notes that *Article 12(1)(c)(i)* of the Convention does not limit labour inspectors' right to interrogate staff in cases of accidents and that this right forms part of the labour inspectors broader power "to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed". **Consequently, the Committee requests the Government to take, in the near future, the necessary measures aimed at bringing the legislation into compliance with Article 12 and keep the ILO informed of progress achieved to this end.**

*Article 14. Notification of cases of occupational disease to the labour inspectorate.* The Committee notes with **interest** that according to the Government's report, in 2010, 17,800 workplaces were inspected to ensure compliance with

the established procedure for the reporting and investigation of industrial accidents, as a result of which over 37,000 breaches of procedure of various kinds were identified and 1,686 unreported accidents were discovered and properly investigated, including 55 collective incidents, 1,023 serious accidents and 326 fatal accidents.

The Committee also notes, however, that while the activity report of the Rostrud for 2010 contains statistics of industrial accidents, it does not seem to contain information on cases of occupational disease. The national Labour Code does not seem to contain any provision stipulating the need to notify cases of occupational disease to the labour inspection services (in its report of 2007, the Government referred to articles 228–230 of the national Labour Code, and indicated that there were accompanying documents and guidelines for the reporting and investigation of industrial accidents only). The Committee would like to draw the Government's attention to paragraph 118 of the 2006 General Survey on labour inspection, in which it emphasized the importance of establishing a systematic information mechanism to enable the labour inspectorate to have access to the data necessary to determine which activities present a risk and the categories of workers most at risk, and to investigate both the causes of occupational accidents and diseases in workplaces and enterprises under its control. In this regard, it also wishes to draw the Government's attention to the ILO code of practice on the recording and notification of occupational accidents and cases of occupational disease 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/info/standards-and-instruments/codes/WCMS\\_107800/lang--en/index.htm](http://www.ilo.org/safework/info/standards-and-instruments/codes/WCMS_107800/lang--en/index.htm)). ***The Committee requests the Government to indicate the steps taken to ensure that national legislation provides for the conditions and the manner in which cases of occupational disease should be notified to the labour inspectorate. The Committee also asks the Government to provide information on whether labour inspectors inform employers and workers about the importance of notifying industrial accidents and cases of occupational disease so as to encourage compliance with the relevant legal provisions in pursuance of Article 3(1)(b).*** In addition, the Committee draws the attention of the Government to Paragraphs 6 and 7 of the Labour Inspection Recommendation, 1947 (No. 81) on the collaboration of employers and workers in regard to health and safety.

*Articles 20 and 21 of the Convention. Publication and communication to the ILO of the annual report on labour inspection activities.* The Committee notes that the Government has again not communicated an annual report on the work of the labour inspection services. It notes however that the activity reports of the Rostrud, of which the Russian labour inspectorate is part, are regularly published online at [www.rostrud.ru](http://www.rostrud.ru). Furthermore, the Committee notes that the Government, in the reports communicated in 2009–10, refers to laws and regulations relevant to the supervisory and inspection work of the Rostrud; and contains some information on the number of the staff of the labour inspection service; statistics of inspection visits; statistics of violations and penalties imposed, as well as statistics of industrial accidents. ***The Committee would be grateful if the Government would indicate any steps taken or envisaged in order to publish a consolidated labour inspection report containing detailed information on all the items listed in Article 21(a)–(g) of the Convention, and ensure its regular transmission to the ILO, as required by Article 20(3) of the Convention.***

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

## 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 context of the decentralization of labour inspection.* In its previous comments, the Committee expressed concerns in relation to the decentralization of the labour inspection system, as it appeared to be accompanied by a weakening of human and budgetary resources. The Committee noted that a decentralization of the labour inspection system may only be acceptable under *Article 4* if the units at the decentralized level have the resources necessary for the implementation of the labour inspectorate functions within their jurisdiction (General Survey on labour inspection, 2006, paragraph 140). It emphasized that decentralization characterized by a general and chronic inadequacy of resources, bears the intrinsic risk of both the volume and quality of inspection, being negatively affected, in addition to the ability of inspectors to fulfil their reporting obligations to the central authority, as envisaged in *Article 19*, so as to allow for a general assessment of the labour inspection system through the establishment of annual reports pursuant to *Articles 20* and *21*. In particular, the budget allocation appears to be managed at the prefectural level, with the result that decisions on resource allocation at the decentralized level are taken by the local authority, which results in the absence of a single policy in labour inspection throughout the territory in terms of the planning of inspections and communication, recruitment and training, and the allocation of material resources, such as transport and office facilities. The management of resources at the local level in this manner appears to result in the recruitment of labour inspectors at the local level, and in inspectors being placed under the supervision of the prefect or the mayor at the district level, as indicated by the Government in its previous reports. The Committee noted previously that any instruction or policy of a technical nature by the Ministry of Labour with a view to ensuring a single policy throughout the provinces, is likely to remain a dead letter, as the budget allocated to labour inspection depends on the local prefect or mayor. It also noted that the provision of adequate budgetary resources is essential to ensure that labour inspection staff are independent from improper external influences, as required by *Article 6*.

In this context, the Committee notes the indications made by the Government in response to its comments that an adequate budget is allocated to labour inspectors in the districts, and that budget allocation is coordinated by the central

authority in cooperation with local governments. The Government adds that district labour inspectors are required to report to the central authority, namely the Ministry in charge of labour, and that the latter assumes a technical coordination role, providing supervision on ethical questions, giving policy guidance and providing technical support. It also notes from the website of the Ministry of the Public Service and Labour a number of policy documents relating to the Public Administration Reform in Rwanda, such as the Policy Framework for Rwanda's Civil Service Reform.

*The Committee requests the Government to provide more details on the criteria for budget allocation for labour inspection among local governments. It also asks the Government to clarify whether a particular budget line is dedicated to labour inspection only at the district and/or state level. It further asks the Government to specify the manner in which disagreements are resolved on the use of budgetary resources between local governments and the central authority in the field of labour inspection, and whether the central authority is vested with final powers of decision in such cases.*

*It asks the Government to provide any legal text which serves as a basis and which it deems useful in this regard in order to enlighten the Office on the nature of the cooperation described in budget allocation.*

*The Committee also requests the Government to provide information on the resource situation within the labour inspection system, including the number of staff by district and at the central level, the means of transport and office space available for labour inspectors in each of the districts.*

*Finally the Committee asks the Government to keep the Office informed of any development in the public administration reform, and to describe its possible impact on the status and conditions of service of labour inspectors, and on the organization of the labour inspection system.*

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

## San Marino

### **Labour Statistics Convention, 1985 (No. 160) (ratification: 1988)**

The Committee notes that the Government provided its last report for the period ending in 2006. 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:

*Part I of the report form. Legislation. The Committee would be grateful if the Government would indicate any new legal provision relating to matters covered by the Convention and international standards used in designing or revising the concepts, definitions and methods used in the collection, compilation and publication of the statistics required thereby.*

*Article 2 of the Convention. The Committee asks the Government to provide information on the application of the latest international standards and to specify, for each Article of the Convention for which the obligations were accepted (i.e. Articles 7, 8, 9, 10, 11, 12, 13, 14 and 15), which standards and guidelines are followed.*

*Article 7. The Committee requests the Government to indicate the concepts, definitions and methodology used to produce the official estimates of labour force, employment and unemployment in San Marino.*

*Article 8. The Committee invites the Government to provide methodological information on the concepts and definitions relating to the register-based labour force statistics in pursuance of Article 6 of this Convention be provided to the ILO.*

*Article 9(1). Noting that the annual statistics of average earnings and hours actually worked are not yet broken down by sex, the Committee asks the Government to take necessary steps to this end and to keep the ILO informed of any future developments in this field.*

*Article 9(2). The Committee asks the Government to ensure that statistics covered by these provisions are regularly transmitted to the ILO.*

*Article 10. The Committee asks the Government to take necessary steps to give effect to this provision and to keep the ILO informed of any developments in this field.*

*Article 11. The Committee notes that no information is available on the structure of compensation of employees by major components. It therefore asks the Government whether it is possible to compile such statistics for more than four groups in manufacturing, and to communicate these to the ILO as soon as practicable, in accordance with Article 5 of this Convention.*

*The Committee also asks the Government to indicate the measures taken to produce, publish and communicate to the ILO specific methodological information on the concepts, definitions and methods adopted to compile statistics of average compensation of employees in pursuance of Article 6.*

*Article 12. The Committee invites the Government to provide the methodological information on the new consumer price indices (CPI) (base December 2002=100) in pursuance of Article 6 of this Convention.*

*Article 13. The Committee notes that detailed statistics on household expenditures are regularly published by the Office of Economic Planning, Data Processing and Statistics in the annual publication, Survey on the consumption and the San Marino families life style. However, no information is available in this publication about the sources, concepts, definition and methodology used in collecting and compiling household income and expenditure statistics. The Committee invites the Government to:*

- (i) indicate whether the representative organizations of employers and workers that were consulted when the concepts, definitions and methodology used were designed (in accordance with Article 3); and*
- (ii) communicate a detailed description of the sources, concepts, definition and methodology used in collecting and compiling household income and expenditure statistics as required under Article 6.*

*Article 14. The Committee requests the Government to provide more comprehensive information about the statistical system, with particular reference to the concepts and definitions used for statistics on occupational injuries.*

*Article 15. As no data on strike and lockout (rates of days not worked, by economic activity) were provided, the Committee invites the Government to communicate data in accordance with Article 5 of this Convention.*

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

## 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.*

## Solomon Islands

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1985)**

The Committee notes the Government's report received by the Office on 30 September 2011, as well as the joint comments of the representative employers' and workers' organizations attached thereto (the Solomon Islands Chamber of Commerce and Industry (SICCI), the Solomon Islands Chinese Association (SICA), the Solomon Islands Indigenous Business Association (SIIBA), the Solomon Islands Women in Business Association (SIWIBA), the Association of Solomon Islands Manufacturers (ASIM), the Solomon Forestry Association (SFA), the Solomon Islands Council of Trade Unions (SICTU), the Solomon Islands Public Employees' Union (SIPEU), the Solomon Islands National Union of Workers (SINUW) and the Solomon Islands National Teachers' Association (SINTA)). According to the representative employers' and workers' organizations, there is a need for capacity building of the Labour Department and the social partners on the content and application of international labour standards. The Committee notes in this regard that the Government expressed its appreciation for the technical assistance provided by the Office for the preparation of article 22 reports and the facilitation of the discussion of the reports with the social partners. *The Committee invites the Government to take formal steps so as to avail itself of further ILO technical assistance aimed at capacity building in the area of labour inspection and to keep the Office informed of developments in this regard.*

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

## Sri Lanka

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1956)**

The Committee notes the observations made by the Lanka Jathika Estate Workers' Union (LJEWU) dated 8 November 2011, and received by the Office on 2 December 2011, in which the trade union recalls the points it previously raised, and invites the Government to reply to the relevant comments made by the Committee in its last observation.

*Article 12(1)(a) of the Convention. Right of inspectors to freely enter any workplace liable to inspection.* According to the observations made by the LJEWU, labour inspections in export processing zones (EPZs) are restricted and require prior approval due to unwritten and undeclared concessions granted to investors by the Government. The Committee recalls that it noted, in its previous observation, the Government's indications that labour inspectors have the right to freely enter workplaces in EPZs, without prior approval or notice to the Board of Investment. *The Committee asks the Government to make any observations it deems appropriate in relation to the comments made by the LJEWU and to furnish relevant data, including on the number of announced and unannounced visits in EPZs and their results.*



The Committee recalls that it requested the Government to report in 2013 on the issues raised in its previous observation which read as follows:

*Articles 3, 8, 10, 11, 16, 20 and 21 of the Convention. Functioning of the labour inspection system.* The Committee notes the Government's indication that the impact of the restructuring of the labour inspection system on the effective discharge of the labour inspection functions has not been evaluated yet. Nevertheless, the Government provides information on the number of workplaces liable to inspection (a total of 86,619), including information on their distribution by economic sector, and the number of workers employed therein (a total of 345,730).

The Committee notes the Government's statement at the 100th Session of the International Labour Conference according to which further assistance is needed, particularly to help inspectors deal with the challenges of outsourcing, occupational safety and health (OSH), and working conditions in the informal economy. According to the Government, an intensive training programme for the numerous newly recruited labour inspectors is urgently needed. The Government also emphasized the need to use new technologies to assist labour inspection activities, especially in export processing zones (EPZs) (source: ILC 2011 *Provisional Record* No. 19, page 14). The Committee notes that ILO technical assistance is given in this framework for the training of labour inspectors.

The Committee also notes that according to the Government's report and the annual inspection report, the number of inspections in factories has slightly decreased (from 4,197 in 2008/2009 to 4,074 in 2010/2011) even though the number of the staff of the labour inspectorate has continued to increase (from 544 officers in 2009 to 608 officers in 2011). It also observes that the Government has not yet provided any information on inspection visits in EPZs or the number of inspection visits in the different economic sectors even though it indicates that initial steps have been taken for the collection of data on this question.

***The Committee once again asks 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, including in EPZs, as soon as it is available.***

***The Committee requests the Government to keep the ILO informed of progress made in the collection of data and once again reiterates its requests under Articles 20 and 21 of the Convention for the publication of an annual inspection report containing information and data on the number of inspection visits in different sectors, including in EPZs, the violations detected and the penalties imposed with reference to the legal provisions concerned, cases brought to the courts and outcomes of the proceedings, number and subject of complaints investigated and results obtained.***

***Noting the information provided by the Government on the training of labour inspectors, the Committee requests the Government to continue to provide details in this regard and to indicate the impact of the technical assistance provided by the ILO in this area.***

***Recalling also from its previous comments that the Government had referred to the need for ILO technical assistance in relation to data collection, the Committee requests the Government to indicate any formal steps taken for the provision of such assistance and to indicate whether further assistance is needed in other areas.***

***Noting also that the number of female inspectors has further increased to 227 out of 608 labour inspectors (from 154 out of 544), the Committee once again 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, recalling that the number of labour inspectors increased, among other things, through the absorption of 178 field officers entrusted with the enforcement of the Employees' Provident Fund Act (i.e. the social security law covering the private sector), the Committee notes with interest the figures provided on the number of cases filed and considerable amounts to be recovered for violations of the Act, and once again requests the Government to indicate the progress made in recovering social security contributions.***

*Article 11(1)(b). Travelling expenses.* The Committee notes that the travelling allowance for labour inspectors, previously criticized as being inadequate by the LJEWU and the National Trade Union Federation (NTUF), has been increased from 10 Sri Lankan rupees (LKR) per mile (approximately US\$0.09) to LKR12 per mile (approximately US\$0.108) by Public Administration Circular (PAC) No. 9 of 2010. However, PAC No. 9 of 2010, attached to the Government's report, still provides for limitations on the mileage that is reimbursed, while it allows for exceptions in special cases to be decided upon by the Commissioner General of Labour. For example, the monthly reimbursement limit for a Labour Officer (District) is set at LKR5,750 (approximately US\$52.17), which the Committee understands to mean that labour inspectors at that grade are reimbursed for travel for up to 483 miles per month. ***The Committee asks the Government to provide information on the circumstances in which travel costs exceeding those set out in PAC No. 9 of 2010 are reimbursed. If available, please provide a copy of a reimbursement form and information on the average length of procedures for reimbursement.***

*Articles 3, 7, 9, 13, 14, 17, 21(f) and (g). Role of the labour inspectorate in the field of occupational safety and health. Statistics of industrial accidents and cases of occupational disease.* Recalling from its previous comments, the observations made by the World Confederation of Labour (WCL) (WCL now merged into the International Trade Union Confederation (ITUC)) and the NTUF on the persistent shortage of factory inspecting engineers, medical officers and occupational hygienists to carry out routine inspections in industrial enterprises. With regard to the commitment made by the Government in previous reports to develop the prevention side of labour inspection in the framework of the restructuring of the labour inspection system, the Committee notes that according to the Government, section 100 of the Factories Ordinance No. 45 of 1942 (FO) has been consolidated in order to make provision for the maintenance of health, safety and welfare of workers in factories and that the OSH staff has increased from 27 to 42, now encompassing 38 factory inspecting engineers, two medical officers and two research officers in order to carry out routine inspections in the various industrial sectors.

The Committee notes that the annual report of the labour inspection service for 2010 and 2011 provides no information on the activities of the labour inspectorate in the field of occupational safety and health, and indicates that no industrial accidents have been notified under the Factory Ordinance No. 45 of 1942, despite the fact that the same report also provides data on the total number of fatal accidents. The Committee notes from this data that fatal accidents have risen from 49 in 2008 to 62 in 2010 and non-fatal accidents have decreased from 1,525 in 2008 to 1,456 in 2010. It notes the Government's statement that both fatal and non-fatal accidents are likely to be much higher due to deficiencies in reporting as well as the lack of coverage of the informal sector. Finally, the Committee notes that no information has been provided on the number of cases of occupational disease.

The Committee would like to recall that the activities of the labour inspectorate in the area of occupational safety and health should focus both on securing the enforcement of the relevant legislation (*Article 3(1)(a)*) and preventing industrial accidents and occupational diseases including through the provision of technical information and advice (*Article 3(1)(b)*), as well as measures with immediate executory force in the event of imminent danger to the health or safety of workers (*Article 13(2)(b)*). The Committee would like to draw the Government's attention to the fact that the establishment of a system that ensures access of the labour inspectorate to information on industrial accidents and cases of occupational disease (*Article 14*) is essential to the development of the prevention policy to which the Government has committed itself in the framework of the restructuring of the labour inspection system. The Committee notes that even though sections 61 and 63 of the FO clearly indicate the cases and circumstances in which such incidents are to be notified to the District Factory Inspecting Engineer, it is essential in order for such a system to function effectively in practice, that comprehensive regulations exist on the procedure for notification and the penalties that apply in the event of negligence. In this regard, the Committee 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)). The Committee also wishes to emphasize that labour inspectors can inform and sensitize employers and workers about the importance of notifying industrial accidents and cases of occupational disease so as to encourage compliance with the relevant legal provisions in pursuance of *Article 3(1)(b)* and of Paragraphs 6 and 7 of the *Labour Inspection Recommendation, 1947 (No. 81)*.

***The Committee once again requests the Government to provide detailed information on the labour inspection activities carried out in the area of OSH, including the adoption of measures with immediate executory force in the event of imminent danger to the health or safety of the workers. It also asks the Government, once again, to provide information on the difficulties encountered in enforcing OSH legislation vis-à-vis employers pursuant to the comments previously made by the NTUF.***

***Furthermore, the Committee requests the Government to indicate the measures taken or envisaged to ensure that the labour inspectorate is duly informed of industrial accidents and cases of occupational disease and that relevant statistics are 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.***

***The Committee finally requests the Government, once again, 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.***

*Articles 17 and 18. Amendments to legislative acts concerning enforcement procedures and dissuasive sanctions.* The Committee previously noted that steps had been taken to update the fines and penal provisions in all legislative acts relating to conditions of work and had asked the Government to keep the ILO informed of the progress made in the adoption of the relevant bills. In this regard, it notes that amendments to the Industrial Disputes Act (IDA) have been approved by the Cabinet of Ministers and that the Bill has been submitted to Parliament. Further, it notes the Government's indication that initial steps have been taken for the envisaged amendments to be introduced in the Wages Boards Ordinance so as to facilitate enforcement in cases of subcontracted work. ***The Committee asks the Government to continue to keep the ILO informed of any progress made in the adoption of the relevant bills, including with regard to the Shop and Office Employees' Act, the Maternity Benefits Ordinance, and the Termination of Employment of Workmen (Special Provisions) Act.***

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 2013.]***

## Sudan

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1970)**

*Context and developments relating to labour inspection.* In its previous comments the Committee noted that the adoption of a transitional Constitution in 2005 had resulted in the transfer of most administrative powers to the provinces (*wilayats*) and the revision of all Sudanese legislation so as to be in conformity with the new federal rule. The Committee notes the 2012 country analysis in the context of the United Nations Development Assistance Framework (UNDAF) for Sudan, according to which "weak governance in numerous sectors, an ineffective civil service, perceptions of corruption, inadequate grass-roots consultation and participation, and a lack of data to formulate and monitor policies and their impact all drain the system of resources needed for development. Issues of poor coordination within and among core institutions and between the centre and the decentralized level are core obstacles to effective development." (page 40). The report proposes that the support provided in the context of UNDAF should focus on four main areas, including governance, the rule of law and basic services (pages 74–75).

The Committee notes that the Government makes no further reference to the communication of a new draft Labour Code to the ILO for comments, and indicates that the Code is being revised and that a copy of it will be sent to the Office, once it has been adopted by the National Assembly. ***The Committee reminds the Government that it may avail itself of technical assistance from the ILO with a view to strengthening the labour inspectorate and adopting legislation that is in conformity with the provisions of the Convention, in the context of the objectives laid down in UNDAF. It requests the Government to provide information in its next report on any formal steps taken in this regard and, if the abovementioned assistance has been received in the meantime, to indicate the results achieved.***

*Article 4(1) and (2) of the Convention. Labour inspection under the supervision and control of a central authority.* The Committee notes the Government's indication that the Ministry of Labour has been reorganized and a public department of labour inspection and labour legislation has been established with a view to greater efficiency, in

accordance with the provisions of the Convention and the conclusions of the resolution of the International Labour Conference concerning labour administration and labour inspection adopted in June 2011. The Committee recalls that the resolution states that: “labour inspection is a public function and is at the core of effective labour law with wide powers and functions, including enforcement and sanctions that should be sufficiently dissuasive to deter violations of labour legislation while also providing corrective, developmental and technical advice, guidance, prevention tools and promoting workplace best practices. These functions should be regulated and balanced as part of a comprehensive compliance strategy in order to ensure decent working conditions and a safe working environment.” ***The Committee requests the Government to provide in its next report an organizational chart of the Public Department of Labour Inspection and the legislative texts by which it is established. The Government is also requested to send an up-to-date list of regional and local labour inspection structures at labour offices and also information on their available resources for action.***

*Article 5(a). Cooperation between the inspection services and the judicial system.* According to the Government’s report, no cases relating to labour inspection have been brought before the courts. However, the Government indicated in its previous report that some cases were referred to the courts after measures taken by labour inspectors, consisting of advice, warning or reprimands, had all failed. The court had issued its judgement, imposing a fine and a sentence of imprisonment. The Committee further notes that, according to the UNDAF country analysis (page 34), “the justice sector has been severely degraded in some areas of the country, such as Darfur” and “awareness of the right to justice remains very low, necessitating further support to adoption of public policies addressing access to justice for the poor and marginalized”. ***Referring to its 2007 general observation, the Committee requests the Government to indicate the measures taken to strengthen cooperation between the labour inspection system and the judicial system and to secure from the judicial authorities the diligence and substantive treatment which should be given to infringement reports drawn up by labour inspectors, and to disputes concerning the same fields which are directly submitted to them by workers or their organizations.***

***The Committee also requests the Government once again to provide the ILO with copies of extracts from court decisions issued for violations of the legislation relating to conditions of work, and also information on the effective implementation of these decisions in practice and on their impact with regard to observance of the applicable legislation.***

*Article 7(3). Adequate training for labour inspectors for the performance of their duties.* The Committee notes that the Government is requesting assistance from the ILO with regard to training for labour inspectors. ***It hopes that this assistance will be provided in the near future and requests the Government to indicate the measures taken to submit an official request to this effect and also the results achieved.***

*Articles 19, 20 and 21. Preparation, publication and communication to the ILO of an annual report.* The Committee notes that the Government emphasizes the importance of publication of the annual labour inspection report. Referring to its general observation of 2010, the Committee recalls that, 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 Committee requests the Government to take the necessary steps to ensure that an annual labour inspection report, containing information on all the points covered by Article 21, is drawn up and published as soon as possible and requests it to send a copy to the ILO.***

## Swaziland

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1981)***

*Articles 2, 3(1) and (2), 10, 11, 16 and 17 of the Convention.* *Functioning and resources of the labour inspection system.* The Committee notes from the limited information provided in the Government’s report that the total number of inspections increased from 2,866 in 2009 to 3,548 in 2010, thus contributing, according to the Government, to a better awareness of national labour standards among employers. The Government refers to a single targeted inspection campaign conducted in the apparel industry during the reporting period and specifies that labour inspectors only carry out inspections pursuant to complaints due to the lack of transport facilities. According to the Government, despite the purchase of new cars, all the vehicles have been grounded due to cash flow problems. The Government also indicates that despite the fact that it has managed to fill all vacancies in the labour inspectorate, there is still need to establish new posts as the number of workplaces liable to inspection is increasing.

The Committee notes with ***regret*** that the Government’s report does not provide the information previously requested by the Committee on the steps taken or envisaged 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. The Committee refers to *Article 3(1) and (2)* of the Convention and notes that these functions are likely to interfere with the effective discharge of the primary enforcement and advisory duties of labour inspectors as identified in *Article 3(1)*, or prejudice the authority and impartiality which are necessary to inspectors in their relations with employers and workers. In this respect, the Committee recalls the orientation provided by the *Labour Inspection Recommendation, 1947 (No. 81)*, according to which the labour inspectors’ functions should not

include that of acting as conciliator or arbitrator in labour disputes. *The Committee therefore once again urges the Government to take the necessary measures so as to bring the Industrial Relations Act and the Guidelines for intervention by the Commissioner of Labour into conformity with Article 3(2) of the Convention by clearly dissociating the inspection and conciliation functions, so that labour inspectors can focus on their primary duties under Article 3(1), and to keep the ILO informed of all progress made in this regard.*

*Articles 20 and 21 of the Convention. Annual report.* The Committee notes that no annual report of the Department of Labour has been received in the ILO since 2005 under *Article 20* of the Convention. *The Committee requests the Government to indicate the measures taken or envisaged in order to recommence the publication and regular communication to the ILO of annual reports of the Department of Labour which should contain the information listed in Article 21 of the Convention, including detailed information on the part of the activities of the Commissioner of Labour which concern the enforcement of legal provisions relating to conditions of work and the protection of workers as provided for in Article 3(1)(a) and (b). In the absence of an annual report, the Committee requests the Government to provide detailed information on the number of workplaces liable to inspection and the number of workers employed therein, the staff of the labour inspection service, statistics of inspection visits, violations detected and penalties imposed, as well as data on industrial accidents and cases of occupational disease.*

The Committee recalls moreover that recommendations towards strengthening the labour inspection system of Swaziland were made by the ILO as early as 2005 in the framework of the “Improving Labour Systems in Southern Africa” (ILSSA) project. *The Committee requests the Government to provide information on any steps taken or envisaged as a follow-up to these recommendations, and encourages the Government to continue to avail itself of ILO technical assistance, including in order to obtaining support in its research for the necessary funds in the framework of international cooperation, with a view to the progressive establishment of a labour inspection system which meets the requirements of the Convention.*

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 comments made by the Confederation of Turkish Trade Unions (TÜRK-İS) dated 17 May 2011 which were received with the Government’s report on 8 November 2011.

*Articles 2, 3(1) and (2), 10, 11 and 16 of the Convention. Labour inspection activities in the informal economy.*

1. The Committee notes that the brief data provided by the Government do not include the information previously requested by the Committee on the content and results of the Action Plan for the Strategy to Combat the Informal Economy nor the text of the Social Insurance and General Health Insurance (SIGHI) Act, section 59 of which requires inspection officers to determine 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. Moreover, no data is provided on the number of unregistered workplaces and uninsured workers, as previously requested. *The Committee requests the Government once again to provide a copy of the SIGHI Act in its amended version as well as information on the content and results of the Action plan to combat the informal economy. It further requests updated statistics on the number of cases notified to the social security institutions and the kind of follow-up given by the labour inspectors and the social security institutions including any positive incentives to ensure the regularization of undeclared workers.*

2. The Committee notes from the brief data communicated by the Government that despite the existence of the Action Plan for the Strategy to Combat the Informal Economy, the overall number of inspections decreased from 56,095 in 2009 to 46,969 in 2010, while the most important decrease concerns the social inspections (from 36,386 in 2009 to 29,685 in 2010). It also notes that according to the Confederation of Turkish Trade Unions (TÜRK-İS), labour inspectors generally carry out inspections following complaints. *The Committee requests the Government to identify the reasons for the decrease in the number of inspections and the proportion of complaints-based inspections in relation to the total number of visits.*

The Committee notes moreover with *interest* from the Government’s report the introduction of a new inspection approach in 2010–11, which consists in planning inspections in function of risk, sector or area, and which is also based on the negotiation of inspection priorities with other public bodies, social partners and relevant professional interest groups. *The Committee requests the Government to describe the impact of the new inspection approach in planning targeted labour inspection visits, explain how the negotiation of inspection priorities works in practice, identify these priorities and the bodies involved in the negotiations and communicate the relevant legal texts.*

3. The Committee notes with *interest* that Act No. 6111 creates 1,000 new posts for labour inspectors which are in the process of being filled. In addition, the current number of labour inspectors was 840 at the time of the report, while an additional 137 labour inspectors were under training and 32 were to be appointed in 2011. According to TÜRK-İS, even though this increase is a positive development, a further increase of labour inspectors is indispensable in order to combat irregular employment effectively. *The Committee requests the Government to indicate the progress made in appointing*

*assistant labour inspectors to fill in the newly created posts, and to specify the number of existing labour inspectors and senior labour inspectors broken down by province.*

4. The Committee also notes that the Government has not made any observation on the previous comments of the Turkish Confederation of Employers' Associations (TİSK) which criticized the expanded powers of labour inspectors in verifying subcontracting employment relationships and authorizing short-term employment relationships due to the general economic crisis. ***The Committee requests the Government to communicate data on the activities of the labour inspectorate in relation to subcontracting and short-term work as well as the results obtained in terms of fighting collusion and protecting workers' rights in this context.***

*Articles 3(1)(b), 5(b), 13, 14, 16, 17 and 18. Preventive and enforcement activities in the area of OSH.* The Committee takes note of the information provided by the Government in reply to an observation by TİSK concerning the balance between proactive measures and sanctions. The Government indicates that the improvement of information and awareness levels by employers and workers is one of its priorities and therefore a total of 10,534 representatives of workers, employers and the social partners were trained in seminars, symposia and information meetings and handbooks were prepared for them on several subject matters in the field of occupational safety and health and general working conditions. The labour inspection also carried out campaigns targeting better compliance with employment legislation in the apparel sector, in the tourism sector, health care and retail stores. The Committee takes note of this information.

The Committee notes the information provided by TÜRK-IS, according to which fatal occupational accidents and diseases reported to social insurance institutions increased by 35 percent, from 866 in 2008 to 1,171 in 2009 while the total number of industrial fatal accidents must be much higher. TÜRK-IS suggests that due to globalization, OSH is among the first areas to be subject to expenditure cuts by employers leading to large-scale industrial accidents in several provinces during the last couple of years. The Government refers to various inspection campaigns and trainings conducted from 2009 to 2010, targeting the improvement of OSH in the construction and mining sectors, and in relation to explosives. ***The Committee requests the Government to indicate whether the new inspection approach mentioned earlier on, has facilitated the identification of high risk sectors and the planning of visits leading to preventive and enforcement activities by the labour inspection. It requests the Government to communicate data on the number of visits, the preventive measures ordered such as injunctions with immediate effect in case of imminent danger to the health and safety of the workers, violations found and sanctions and penalties imposed in the area of OSH broken down by sector and province, as well as the evolution of industrial accidents and cases of occupational disease.***

*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.* The Committee notes that the Government has once again not provided any information on the comments made by TİSK in 2007 concerning the transfer of inspection 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, thereby raising obstacles to the coordination of labour inspection activities by a central body. The TİSK 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 often not met, with the result that neither inspection records nor the relevant statistics are up to date.

The Committee notes that Act No. 6111 of 13 February 2011 amended the Labour Law by adding a provision according to which grievances arising from termination of contracts are to be examined by Regional Directorates of the Ministry of Labour and Social Security while complaints of workers with ongoing employment contracts are to be examined by the labour inspectors. ***The Committee requests the Government to provide clarifications on the aim and effect of this provision, and supply detailed information on any measures adopted or envisaged to improve the exchange of information between inspection services and regional directorates as well as their impact on the compilation of statistics by the Labour Inspection Board.***

***Moreover, with reference to its 2007 general observation, the Committee requests the Government to provide information on any measures adopted or envisaged 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 6. Status and conditions of service of labour inspectors.* The Committee notes the repeated statements by TÜRK-IS according to which labour inspectors should work with total independence, to which the Government has not responded. ***The Committee requests the Government to provide information on the status and conditions of service of labour inspectors which guarantee their independence of changes of government and undue external influences as required by Article 6.***

*Articles 20 and 21. Annual report on the work of the labour inspection services.* The Committee notes that a consolidated annual report for the period under review was not submitted to the Office and could not be found online. The Committee refers to its general observation of 2011 according to which 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. It underlines the importance of making the fullest possible information available on each of the subjects enumerated in *Article 21* on an annual basis, including the human resources and institutional, logistical and material means available to the labour inspection, its field

of personal competence (enterprises, establishments and other workplaces liable to inspection as well as the workers occupied therein), its means of operation (inspection, notifications of violations or non-compliance, technical advice and information, observations, warnings, the initiation of recommendation of prosecutions, the imposition of penalties) and finally, data on industrial accidents and cases of occupational disease. *The Committee requests the Government to indicate the measures taken or envisaged to ensure the preparation and publication in due time of an annual labour inspection report containing the information indicated in Article 21, and its communication to the Office within the deadlines set in Article 20.*

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

## Uganda

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)**

*Articles 1 to 24 of the Convention.* Need to establish a labour inspection system that meets the requirements of the Convention. The Committee notes with *regret* that the Government has still not provided a reply to the Committee's comments made in 2009, which it was bound to repeat in 2010 and 2011. It notes the comments made by the National Organisation of Trade Unions (NOTU), received by the ILO on 31 August 2012, in which the organization points once more to the absence of a standalone Ministry of Labour, the lack of human and material resources of the Directorate of Labour, Employment and Occupational Safety and Health of the Ministry of Gender, Labour and Social Development (MGLSD) and the virtual absence of labour inspection activities at the central level. With regard to the local level, the organization once more deplors that, despite the requirement in law that there should be one labour officer per district, more than half of the districts in the country do not have labour officers.

The Committee further notes that an ILO labour administration and inspection needs assessment (ILO assessment) was carried out in the framework of an ILO technical assistance mission in November 2011 at the request of the MGLSD. The Committee understands from the assessment that while the serious problems raised in the Committee's previous comments still persist, the MGLSD seems to be envisaging a better monitoring and guidance of the functions of labour administration and employment, including labour inspection at the local government level. The Committee also notes from the assessment however, that according to statements by senior MGLSD officials, there are no prospects for reversing the decentralization policy which led to the dismantling of the labour inspection system in the first place, as this policy is anchored in the national Constitution.

The Committee is therefore bound to repeat its previous comments 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 company's 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.*

## United Arab Emirates

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1982)**

*Articles 20 and 21 of the Convention. Publication of an annual report on the work of the labour inspection services.* The Committee notes with *interest* that the Government submitted the 2010 annual inspection report which contains information and data on the implementation of the Convention in practice, including statistics on the enterprises subject to labour inspection by emirate and the number of workers employed in these enterprises. *Noting that the obligation to submit the annual report to the ILO is an ongoing obligation under Article 20(3) of the Convention, the Committee requests the Government to continue submitting the annual report within the deadlines established by this article. Furthermore, the Committee would be grateful if the Government could communicate, to the extent possible, statistics on the workers employed in the workplaces subject to inspection disaggregated by sex and origin (nationality).*

The Committee is raising other points in a request that it is addressing directly to the Government.

## United Kingdom

### **British Virgin Islands**

#### **Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)**

*Articles 2, 3, 4 and 5 of the Convention. Application of the Convention in practice.* The Committee notes with *interest* the text of the Labour Code, No. 4 of 2010, which meets the requirements of *Articles 4 and 5* of the Convention. The Committee also notes however that, according to the Government's report, labour inspectors have found no contraventions during the reporting period. In this regard, the Committee notes that under section 24 of the Labour Code, the Commissioner of Labour should produce an annual report with information on the inspections undertaken, the infringements detected, the complaints received from workers and employers, and a status report on occupational safety and health. *The Committee would be grateful if the Government would communicate the annual report in order to illustrate the manner in which the powers and obligations of labour inspectors envisaged in sections 13–15 and 155 of the Labour Code are exercised in practice.*

*Finally, the Committee reiterates its request for the Government to provide full and detailed information on the questions raised in Parts I–V of the report form.*



## Gibraltar

### **Labour Inspection Convention, 1947 (No. 81)**

*Articles 20 and 21 of the Convention.* Failure to submit an annual report on the work of the labour inspection services. Referring to its comments since 1990 in this regard, the Committee notes with **regret** that the Government has never sent an annual labour inspection report to the Office containing full information on all the subjects as required in *Article 21* of the Convention, namely: (a) laws and regulations relevant to the work of the inspection service; (b) staff of the labour inspection service; (c) statistics of workplaces liable to inspection and the number of workers employed therein; (d) statistics of inspection visits; (e) statistics of violations and penalties imposed; (f) statistics of industrial accidents; and (g) statistics of occupational diseases. The Committee notes that the Government again provides information on the number of registered employers (which are taken to reflect the number of workplaces) and the number of workers employed therein, but does not provide updated statistics on the other subjects mentioned above. The Government repeats its indication made in its last report, that both the labour inspectorate and the health and safety inspectorate can provide statistics and other information relating to their work and that the Committee is invited to seek any specifically related information as it may require. The Committee has repeatedly emphasized and would like to recall once more the importance of publishing an annual inspection report by the central authority as part of a mechanism for the ongoing improvement of the functioning of the labour inspectorate and the health and safety inspectorate. **The Committee urges the Government to ensure that the necessary measures are taken by the labour inspection authority with a view to the preparation, publication and communication to the ILO of an annual labour inspection report under Article 20 of the Convention containing information on all the subjects covered by Article 21(a)–(g). It requests the Government to describe such measures or indicate the difficulties encountered in this regard.**

## Uruguay

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 1973)

*Articles 6(1)(a) and (b), 17, 18 and 19 of the Convention.* Role of labour inspection in agriculture with regard to safety and health. The Committee notes with **concern** the information sent by the Government, to the effect that agriculture is the sector with the second highest rate, after the industrial sector, of occupational accidents in the country and that these accidents represent 20 per cent of the total number of accidents into which investigations have been launched. According to the Government, the main causes of accidents in agriculture include the use of machinery without the necessary safety devices, problems in electrical installations, the use of chemicals without any proper planning of risk prevention, lack of training for workers and lack of personal protective equipment. Referring to its previous comments on this subject, the Committee stresses the need to associate labour inspectors in agriculture in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety, in accordance with *Article 17* of the Convention. It invites the Government to refer in this regard to the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), as regards the possible association of the labour inspectorate in preventive controls by means of prior consultation on the putting into operation of such plant, materials or substances, and methods, and on the plans of any plant in which dangerous machines or unhealthy or dangerous work processes are to be used (Paragraph 11). The Committee also draws the Government's attention to the measures envisaged in the Recommendation with a view to undertaking education campaigns for employers and workers in agriculture, such as the use of the services of rural promoters or instructors; the distribution of posters, pamphlets, periodicals and newspapers; the organization of film shows, and radio and television broadcasts; arrangements for exhibitions and practical demonstrations on hygiene and safety and any other appropriate subjects in the teaching programmes of rural schools and agricultural schools; the organization of conferences for persons working in agriculture who are affected by the introduction of new working methods or of new materials or substances; the participation of labour inspectors in agriculture in workers' education programmes; and the organization of lectures, debates, seminars and competitions with prizes (Paragraph 14). **The Committee therefore requests the Government to ensure that measures are taken quickly by the competent authority to determine the cases and conditions in which the labour inspection services in agriculture should be associated in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety. It also requests the Government to take steps to ensure the mobilization of the resources needed to eliminate the most frequent causes of occupational accidents in agriculture, as referred to above, including the provision by labour inspectors of relevant technical information and advice to employers and workers. The Committee also requests the Government to provide information on any measures taken or contemplated in this respect, and to send copies of any legislative text which has been adopted or any draft in this area.**

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

## Bolivarian Republic of Venezuela

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)**

In its observation in 2011, the Committee noted the Government's report, as well as the comments made by the Confederation of Workers of Venezuela (CTV) in a communication dated 29 August 2011 and by the Independent Trade Union Alliance (ASI) in a communication dated 30 August 2011, and also the Government's reply to the comments of the CTV and ASI dated 30 November 2011. However, the Government's reply was received too late to be examined at the Committee's last session. The Committee further notes that, in a communication dated 31 August 2012, the CTV repeats its 2011 comments, and that the ASI, in a communication dated 14 August 2012, makes comments under the *Occupational Safety and Health Convention, 1981 (No. 155)*, which also concern the application of the present Convention. The Committee notes the Government's reply to these comments by the CTV and ASI in two separate communications dated 9 November 2011.

*Articles 3(1) and 13 of the Convention. Labour inspection activities in occupational safety and health (OSH).* The Committee notes the observations made by the ASI in its communication dated 30 August 2011, according to which there is a traditional lack of supervision in the field of OSH, although there have been improvements since the establishment of the National Health and Safety Prevention Institute (INPSASEL).

The Committee noted, in its 2011 observation under Convention No. 155, the comments made by the ASI and CTV, according to which there has been an increase in the number of industrial accidents compared with ten years ago, including a dramatic increase of industrial accidents in the petroleum industry over the past eight years, the condition of some installations of the Venezuelan Petroleum Enterprise (PVDSA) are poor and there are inadequate OSH conditions in the gas plants throughout the country. The Committee also notes the Government's communication dated 9 November 2012, in which it refers to the introduction of new procedures by INPSASEL for the strengthening of the labour inspection services in OSH. In this regard, it refers to the introduction of "integrated inspections" by multidisciplinary teams from the different technical services of the state occupational health directorates (DIRESATs) targeting, among others, enterprises with a high occurrence of occupational accidents, and the so-called "updating operations" in DIRESATs with a high number of reported industrial accidents. ***The Committee asks the Government to provide information on the number of labour inspection visits in the area of OSH, in particular in sectors with a high risk of occurrence of industrial accidents, such as in the construction sector and the petroleum industry, as well as information on enforcement measures taken by the labour inspection services, the legal provisions to which they relate, and the nature of penalties imposed, and to include this information in the annual labour inspection reports.***

***Please also provide information on any preventive activities carried out, including the provision of information and advice and the adoption of measures with immediate effect in case of imminent danger to the health or safety of the workers (Articles 3(1)(b) and 13 of the Convention).***

***The Committee asks the Government to provide information on the impact of the abovementioned activities and operations by INPSASEL on the enforcement of the legal provisions relating to conditions of work and the protection of workers.***

***Noting that the Government has not provided information in this regard, it is asked to provide information also on the number of inspectors engaged in the area of OSH supervision within the structures of INPSASEL.***

*Article 3(2). 1. Conciliation duties entrusted to labour inspectors.* The Committee notes that labour inspectors, in accordance with section 507, indent (10) of the revised Organic Law on Labour and Workers (LOTTT), are required to intervene and act as conciliators to facilitate the negotiation of collective agreements and settle collective labour disputes. The Committee wishes to emphasize, as it has done in its previous comments since 2002, that labour inspection personnel should not be overburdened with other tasks to the detriment of their primary duties. This is particularly true where human and material resources are scarce, as suggested by the comments of the ASI in its communication of 30 August 2011. ***The Committee asks the Government to take the necessary legislative and practical measures to relieve labour inspectors of conciliation duties so that they can devote themselves fully to ensuring the application of legal provisions relating to conditions of work and the protection of workers, thereby contributing to the prevention of situations that give rise to labour disputes.***

*2. Duties of labour inspectors in the area of undeclared work.* Furthermore, the Committee understands, from the information in the Government's report, that the National Economic and Social Development Plan for 2007–13 targets, amongst others, undeclared work, and that joint inspection visits are regularly being carried out together with the People's Ministry of the Interior and Justice (MPPRIJ), the Tax and Customs Administration Service (SENIAT) and the People's Ministry of Defence (MPPD). ***The Committee requests the Government to provide information on the purpose and scope of the abovementioned inspections and the impact of these activities by the labour inspection services on the enforcement of the legal provisions relating to conditions of work and the protection of workers. Please also provide information on the number of infringements detected, the legal provisions concerned, the remedial measures taken and the sanctions imposed.***

*Articles 6 and 7 of the Convention. Status and conditions of service of labour inspectors. Principle of independence of labour inspectors of any change of government and of any undue external influence.* The Committee

notes the indications made by the ASI in its communication dated 30 August 2011 concerning the inadequacy of the conditions of service of labour inspectors, including the absence of employment stability, the lack of career prospects, the low levels of remuneration and insufficient training. The Committee also notes that, according to the CTV in its communications dated 29 August 2011 and 31 August 2012, the effectiveness and professionalism of the labour inspection system is affected by the precarious status of the labour inspectorate, its politicization and corruption. The CTV alleges that the labour inspectorate is used as a political instrument to strengthen the Government's objectives, as well as those of the ruling party, and is often directed against unions at promoting parallel organizations with close ties to the Government. Furthermore, according to the comments of the ASI dated 14 August 2012 under Convention No. 155, the labour inspection services were unprofessional and suffered from "clientelism" in the past, although the Committee understands from the ASI's comments that measures have been taken in this regard. The Government in its communication dated 30 November 2011 refutes the allegations of the CTV and refers to sections 19 and 34 of the Act on the status of the public service, which stipulates that public servants enjoy absolute stability in their employment and are appointed after successful public competitions, and are prohibited from propaganda, public coercion or the display of their political affiliation in the exercise of their functions. **The Committee asks the Government to provide information on the status and conditions of service (stability of employment, remuneration, career prospects, etc.) of the different categories of personnel exercising labour inspection functions, such as the "enforcement inspectors", "labour inspectors" and "labour supervisors" mentioned in the LOTT and "special labour commissioners" mentioned in the Government's report.**

**The Committee requests the Government to provide an organizational chart of the labour inspection system and information on the reporting lines throughout its structures.**

**The Committee also asks the Government to provide information on the criteria and procedures followed for the recruitment of labour inspection staff at the different hierarchical levels (Article 7(1) of the Convention), including for the new categories of labour inspectors introduced in the LOTT, such as the 'enforcement inspector' (body responsible for the recruitment, duration and methods used to assess qualifications, number of applicants and number of candidates selected, etc.).**

Articles 3(1)(a) and (b) and 17, 18 and 21. *Increased sanctions and implementation of other penalties for the violation of labour legislation. Balance between preventive and enforcement activities of the labour inspectorate.* The Committee notes the observations made by the ASI, in its communication dated 14 August 2012 under Convention No. 155, that the granting of so-called "labour compliance", which is a prerequisite for contracts with the State to receive foreign currencies or obtain import or export licences, was introduced as a means of applying pressure and controlling private enterprises and is aimed at those employers who politically opposed the Government in the past. According to the ASI, there is a wide range of discretion concerning the withdrawal of labour compliance and there is no guarantee of due process in law.

In this context, the Committee notes that, following the coming into force of the revised version of the LOTT of May 2012, the level of sanctions and enforcement powers of labour inspectors has been strengthened. Section 512 of the LOTT introduces the function of "enforcement inspector" in each inspectorate for the enforcement of administrative instructions with special effects. Enforcement inspectors are empowered to request the withdrawal of "labour compliance" provided for in Decree No. 4248 of 30 January 2006, until employers comply with these administrative instructions and, in the case of obstruction by employers against the implementation of these administrative instructions, they may request the support of the public security forces or request the arrest of employers by the public prosecutor's office.

The Committee notes that, according to section 3 of Decree No. 4248 of 30 January 2006 establishing the labour compliance, the administrative certificate issued by the People's Ministry for Labour and Social Security (MINPPTRASS) is valid for one year and is a prerequisite for entering into contracts and agreements with all governmental bodies, such as the granting of loans by the public finance system, authorization to apply for funding for the import of raw materials, authorization to receive foreign currencies from the National Public Administration and the granting of export or import licences. Under the terms of section 553 of the LOTT, where employers do not comply with the obligations set out therein, they can be denied the "labour compliance", or it can be revoked. Under section 4 of Decree No. 4248, labour inspectors are required to deny the issuance or revoke this administrative document if an employer is: (a) in breach of an order, instruction or other decision of the Minister of State or Minister of Labour; (b) refuses to give effect to an administrative order or decision by the labour inspectorate; (c) disregards any decision by the competent supervision and inspection officials; (d) fails to comply with any decision by the Venezuelan Social Insurance Institute (IVSS) or the INPSASEL; (e) fails to give effect to a decision by the labour or social security courts; (f) fails to pay contributions in time, including contributions to the social security system; or (g) is in violation of the rights of freedom of association, collective bargaining or the right to strike. The Committee notes the information provided by the Government in its communication of 30 November 2011 that this document is currently in the process of being digitalized to allow for easier verification of labour compliance.

As the Committee outlined in paragraphs 280 et seq. of its 2006 General Survey on labour inspection for the labour inspectorate, the functions of enforcement and advice are inseparable in practice. It further indicates that violations may be the result of failure to understand the terms or scope of the applicable laws or regulations. Therefore the labour inspector must always have discretion to choose not to impose penalties as a means of enforcing legal provisions. To this end,

Article 17(2) of Convention No. 81 provide(s) that it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings. This discretion implies that inspection staff have the necessary capacity for judgement to be able to distinguish between serious or repeated wilful non-compliance, culpable negligence or flagrant ill will, which call for a penalty, and an involuntary or minor violation, which may lead to a mere warning. Competent and experienced inspectors are aware of the value of advice and warnings as incentives for the proper application of legal requirements.

*The Committee asks the Government to reply in detail to the allegations made by the ASI on the impact of the labour compliance in practice and the absence of due process safeguards. It also asks the Government to provide data on the cases in which the labour compliance was denied or revoked by labour inspectors, and particulars of the relevant infringements according to the legal provisions to which they relate. Furthermore, the Committee asks the Government to provide information on the nature, frequency and content of the “administrative instructions with special effects” imposed on employers, with reference to relevant legal provisions, and to provide copies of such instructions. It also asks the Government to provide information on the number of cases in which labour inspectors have asked to be supported by the public security forces for the enforcement of these administrative instructions and whether employers have been detained.*

*The Committee also requests the Government to indicate the manner in which labour inspectors exercise in practice the discretion provided for in Article 17 of the Convention to give warning and advice instead of instituting or recommending proceedings, and to indicate the manner in which it is ensured that labour inspectors apply the appropriate measures to achieve compliance with labour legislation and strike a reasonable balance between their educational and enforcement functions. Please also provide a copy of any relevant internal instructions in this regard.*

*Given that the Government has not provided information on the number of violations detected and the sanctions imposed following inspections, the Committee asks the Government to provide statistics of violations and penalties, including: (i) the number of infringements reported to the competent authorities; (ii) particulars of the classification of such infringements according to the legal provisions to which they relate; (iii) the number of convictions; and (iv) particulars of the nature of the penalties imposed by the competent authorities in the various cases (fines, imprisonment, revocation of labour compliance, etc.) and to include such information in the annual report on the activities of the labour inspectorate.*

Article 11. *Material resources available to labour inspection personnel.* The ASI in its comments dated 30 August 2011 indicates that the MINPPTRASS has the lowest budget in the public administration, which would limit the supervision of labour standards, and in its comments dated 14 August 2012, refers to insufficient transport facilities of the labour inspection services.

The Committee notes with *interest* the Government’s indication that significant efforts have been made which have resulted in all labour supervisors now being equipped with laptop computers, all labour inspection units having an Internet connection and the establishment of a telephone number to receive claims from workers. *The Committee would be grateful if the Government would provide detailed information on the material means available throughout the structures of the labour inspection services under the MINPPTRASS and INPSASEL, including the number and type of transportation means available. Please also provide information on the proportion of the national budget allocated to the MINPPTRASS and INPSASEL, and to their respective labour inspection services.*

Article 14. *Notification of industrial accidents and cases of occupational disease.* In its observation in 2011 under Convention No. 155, the Committee noted that according to the CTV, statistics on the number of industrial accidents were not reliable and that the ASI estimates that 90 per cent of occupational accidents were not reported. It further notes that, in its comments dated 29 August 2011 under Convention No. 155, the CTV alleged that INPSASEL weights or amends for political reasons the register of industrial accidents, and that there is evidence of workers who have been denied the right to register cases at INPSASEL, for instance industrial accidents that occurred in installations of the PVDSA.

In this regard, the Committee notes the information provided by the Government under Convention No. 155 on industrial accidents and cases of occupational disease for the first six months of 2011, when 29,020 industrial accidents and 1,130 cases of occupational disease were reported, as well as for the first six months of 2012, when 30,907 industrial accidents and 1,328 cases of occupational disease were reported. According to the Government, these cases were reported by workers and employers through the Internet and registered by the system for the declaration of cases of occupational disease of INPSASEL which, according to the Government, is in its first stage of development. While the most recent data on industrial accidents and cases of occupational disease on the website of INPSASEL relate to 2006 and 2007 respectively, the Committee also notes the Government’s indications that INPSASEL is in the process of reviewing the statistics of industrial accidents for the years 2008, 2009 and 2010.

The Committee notes in this respect that section 56(10) of the Organic Law for Prevention, Conditions and Environment in the Workplace (LOPCYMAT) clearly sets out the obligation for employers to report industrial accidents, cases of occupational disease and any other pathological conditions that may occur in the workplace to INPSASEL, and that section 73 of the same law sets out a delay of 24 hours for the notification of industrial accidents by the employer. However, the Committee notes that the ASI indicates, in its communication dated 14 August 2012 under Convention

No. 155, that there are separate regulations on the notification procedure for industrial accidents and cases of occupational disease, which are difficult to manage in practice. Emphasizing the need for comprehensive and practicable regulations for the effective functioning of the notification procedure in practice, the Committee 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)).

*The Committee would be grateful if the Government would describe the procedure for the notification, registration and investigation of industrial accidents and cases of occupational disease, and communicate a copy of any applicable text.*

*The Committee asks the Government to reply in detail to the comments made by the CTV and ASI. In particular, referring to its observations in 2011 and 2012 under Convention No. 155, the Committee once again requests the Government to provide its comments on the issues related to the under-reporting of industrial accidents and cases of occupational disease. Furthermore, the Committee asks the Government to make the necessary efforts, so as to provide the relevant statistical information on industrial accidents and cases of occupational disease from 2007 up to the present, and to include this information in the annual report of the labour inspection services.*

*Articles 12(2) and 15(c). Confidentiality of the source of the complaint and of any links between a complaint and an inspection visit.* Following up on its comments since 2002, the Committee notes that section 514 of the LOTTT still requires labour inspectors to notify employers upon their arrival in the establishment of the reason for the inspection. As the Committee has repeatedly emphasized, under these provisions of the Convention, labour inspectors should, on the one hand, be able to assess the appropriateness of warning employers of their presence and, on the other hand, should be prohibited from revealing to the employer or his/her representative the fact that the inspection has been occasioned by a complaint. The purpose of the obligation of confidentiality is to ensure that workers are protected from the risk of any reprisals by the employer as a result of the complaint. A guarantee of confidentiality is essential to ensuring the necessary trust in relations between workers and labour inspectors. *The Government is therefore asked once again to ensure that measures are taken to bring its legislation into conformity with the Convention on these points and to provide information on the progress achieved. Please also provide a copy of any relevant texts.*

*Articles 20 and 21. Preparation and publication of an annual report on the work of the labour inspection services. Implementation of a computerized register of enterprises.* The Committee notes that no annual report on the labour inspection services was received with the Government's report and that no complete annual inspection report has been received by the ILO since 1998. However, it notes that the Government's report contains some information relating to: (a) the number of labour inspectors and their geographical distribution; (b) the number of enterprises registered and their geographical distribution; (c) the number of inspections and follow-up inspections carried out in the different regions and the total number of workers concerned; and (d) the total number of inspections targeting specific categories of workers. The Committee also notes the establishment, organization and operation of the Register of Enterprises by Decisions Nos 4224 of 21 March 2006 and 4225 of 22 March 2006, on the basis of Decree No. 4248 of 30 January 2006. The Register is a computerized system aimed at compiling data on labour and social security for all enterprises and workplaces in the country, including data on the compliance of employers with instructions of the labour inspectorate and other administrative authorities, and the issuance or withdrawing of the labour compliance. Registration is compulsory for all enterprises operating in the country. Referring to its general observation of 2009 in which the Committee emphasized that a register of workplaces liable to inspection would provide the central labour inspection authorities with the data that are essential to prepare the annual report, it hopes that the Government will soon be in a position to fulfil its obligations under *Articles 20 and 21. The Committee once again asks the Government to indicate the measures taken or envisaged to ensure that, as provided by Articles 20 and 21 of the Convention, 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 all the matters set out in Article 21(a) to (g) of the Convention.*

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

## Viet Nam

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)**

The Committee notes with *interest* that the Government received ILO technical assistance in the form of a labour inspection needs assessment in March 2012 and that the recommendations made in the assessment correspond to a large extent to the Committee's previous comments on the application of the Convention. *The Committee requests the Government to indicate the steps taken or envisaged with a view to the progressive establishment of a labour inspection system which fully meets the requirements of the Convention and any steps taken or envisaged in order to obtain access to the necessary funds to this effect in the framework of international cooperation.*

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

## Yemen

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)**

The Committee notes with *interest* that a labour inspection audit was carried out by the ILO at the request of the Government in October 2009 giving rise to a number of recommendations on ways to reinforce the labour inspection system which correspond to a number of the Committee's previous comments. *The Committee asks the Government to indicate the steps taken or envisaged with a view to the progressive establishment of a labour inspection system which fully meets the requirements of the Convention. In this regard, the Committee encourages the Government to seek international financial assistance to enable it to ensure the effective functioning of the labour inspection services and to keep the ILO informed of any measures taken and the results achieved in this respect.*

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. 81** (*Algeria, Angola, Argentina, Armenia, Australia, Bahrain, Plurinational State of Bolivia, Bulgaria, Burkina Faso, Cameroon, Cape Verde, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Colombia, Costa Rica, Cuba, Cyprus, Democratic Republic of the Congo, Ecuador, El Salvador, Estonia, Fiji, Finland, France: New Caledonia, Ghana, Greece, Guinea-Bissau, Guyana, Honduras, Iceland, Ireland, Kenya, Lebanon, Liberia, Madagascar, Malaysia, Malta, Republic of Moldova, Netherlands: Aruba, Netherlands: Curaçao, Panama, Paraguay, Russian Federation, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Slovenia, Solomon Islands, Swaziland, Tajikistan, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom: Jersey, Bolivarian Republic of Venezuela, Viet Nam, Yemen*); **Convention No. 85** (*United Republic of Tanzania: Zanzibar*); **Convention No. 129** (*Plurinational State of Bolivia, Burkina Faso, Colombia, Costa Rica, Estonia, Fiji, Finland, France: New Caledonia, Iceland, Kenya, Malta, Republic of Moldova, Norway, Saint Vincent and the Grenadines, Slovenia, Uruguay*); **Convention No. 150** (*Democratic Republic of the Congo, Guyana, Liberia, Malawi, San Marino, Trinidad and Tobago*); **Convention No. 160** (*Swaziland*).

## 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 report submitted in September 2011 in reply to the observation made in 2010, and the general explanations in the report on government policy for the promotion of employment. The statistical data provided show a clear improvement in the employment situation, with a fall in the unemployment rate from 15.3 per cent in 2005 to 10 per cent in 2010, in a context of strong demographic growth, as the active population rose by over 1.1 million persons over that period. The activity rate of women, although slightly higher, at 15.1 per cent (compared with 14 per cent in 2000) remains well below that of men, which is around 70 per cent. The Committee observes that the participation of women in employment, which has the effect of lowering the figures for unemployment, also has the disadvantage of reducing the country's wealth creation potential. **The Committee requests the Government to provide detailed information in its next report on the progress achieved in improving the participation of women in the labour market. It also invites the Government to provide updated data on the active population and its distribution, the nature, extent and trends of unemployment and underemployment, disaggregated by age, sex and region, as well as on other categories for which data are available.**

*Article 3. Participation of the social partners.* In reply to the previous comments, the Government indicates that the National Economic and Social Pact, concluded in September 2006, has been the subject of three evaluations in a tripartite setting. In a tripartite meeting held in December 2009, the Pact was renewed and strengthened. In its 2010 observation, the Committee noted the adoption in April 2008 of a plan of action to promote employment and combat unemployment, setting out the government employment strategy for the period 2008–13. In its latest report, the Government indicates that programmes based on the three focus areas have been implemented in relation to placement on the employment market, youth employment and micro-enterprise development. **The Committee invites the Government to provide information in its next report on the implementation of the measures envisaged by the plan of action for employment ending in 2013. It hopes that the next report will contain precise information on the contribution of the social partners to the formulation of a new plan of action for employment and to the revision of the employment policies and programmes already implemented. Please also indicate the manner in which the views of "representatives of other sectors of the economically active population", and particularly those working in the rural sector and in the informal economy, have been taken into account so that they cooperate fully in the formulation of employment policies and help to enlist support for the measures taken in this respect.**

*Youth employment.* In its report the Government provides updated statistics on the vocational integration assistance mechanism (DAIP), which is intended to facilitate the conclusion of various contracts for young persons. Nearly 600,000 young persons benefited from the mechanism up to June 2011. In February 2011, further measures were adopted by the Council of Ministers to extend the coverage of mechanisms allowing a personalized approach with a view to providing young persons with support for vocational integration adapted to their needs. **The Committee invites the Government to provide detailed information in its next report on the vocational integration of young beneficiaries of the DAIP, particularly in relation to the long-term integration of the most under-privileged young persons into the labour market and its impact in terms of reducing unemployment.**

*Promotion of micro-, small and medium-sized enterprises.* The Committee notes the various measures envisaged with a view to the creation of 200,000 SMEs over the period 2010–14. Further incentives for enterprises and investment were decided upon at a tripartite summit on 28 May 2011. Moreover, specific measures have been envisaged to facilitate the economic activity of micro-enterprises. **The Committee invites the Government to provide detailed information in its next report on the results achieved through these initiatives in terms of job creation.**

*Employment market policies for workers with disabilities.* The Government indicates that, in the context of the Five-Year Programme 2010–15, it was planned to create nine establishments: four work support centres, to be established in Algiers, Oran, Ouargla and Constantine, and five learning farms, to be located in Algiers, Bistra, Mascara, Bouira and Illizi. Persons who obtain satisfactory results in these centres may have access to employment in a sheltered workshop or a centre for the distribution of homework. **The Committee invites the Government to continue providing information on the operation of these centres and to supply any relevant indications on the integration of workers with disabilities into the labour market.**

### Angola

#### **Employment Service Convention, 1948 (No. 88) (ratification: 1976)**

*Contribution of the employment service to employment promotion.* The Committee notes the brief report provided by the Government in May 2010 and in 2012. In its 2008 observation, the Committee had noted that, in the context of its policy to combat unemployment and poverty, public policies were established with a view to stimulating employment. Furthermore, employment and vocational training were one of the ten priorities of the Poverty Reduction Strategy, which

was to 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 survive on less than US\$2 a day and enrolment in primary schools is increasing very slowly (from 50 per cent in 1990 to 53 per cent in 2000). The Committee therefore emphasized the need to guarantee the essential function of employment services to promote employment in the country. ***The Committee once again asks Government to provide a report containing the available 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). Please also provide information in the next report on the following matters:***

- *the 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 or with 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 for 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 2013.]***

## **Austria**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1972)**

*Articles 1 and 2 of the Convention. Employment trends and active labour market measures.* Following the 2010 observation, the Government provided a review of the labour market situation and the measures envisaged under the Integrated Economic and Employment Policy Guidelines for the Europe 2020 Strategy. The Committee notes that already in March 2010 the trend in the Austrian labour market reversed, following the economic recovery in the second half of 2009. The number of unemployed persons registered with the labour exchange services (AMS) has continuously decreased. The unemployment rate (in percentage of persons gainfully employed, according to Eurostat) was 4.8 per cent in February 2011. Until 2014, the Austrian Institute for Economic Research (WIFO) envisages a further decrease of the unemployment rate to 3.9 per cent. Real growth of GDP of more than 3 per cent is expected in 2011 (in 2010, GDP growth was estimated at 2.1 per cent). The increase in GDP is primarily fostered by the export economy and private consumer spending. The Committee further notes efforts mentioned by the Government to increase the employment rate of 20 to 64 year-olds to between 77 and 78 per cent, with a focus on a significantly greater share of employment among older workers, especially by raising the effective retirement age to 62. Measures relating to the raising of the retirement age would be further developed and extended by adult training. The Government also refers to the employment campaign for the integration of persons with disabilities (some €135 million were allocated in 2010). The focus was on preserving jobs for persons with disabilities, which was achieved by the temporary introduction of short-time working. A new immigration system for non-European Union nationals and European Economic Area States was introduced based on the admission without quota of highly skilled workers and specialists where there is a shortage. The Government recalls that social dialogue plays an increasing and decisive role. No important decision can be taken by the Government without the agreement of the social partners' organizations. ***The Committee notes the performance of the Austrian economy and sustained job growth. It looks forward to receiving from the Government, in its next report, an assessment of the impact of its active labour market measures, in particular, with regard to vulnerable groups, such as low-skilled workers, persons with disabilities and immigrant workers. The Committee would also appreciate continuing to receive information and data on successes, problems encountered and lessons to be learned from the experience of social partners in Austria with regard to the application of the Convention.***

*Youth employment.* The Committee notes the detailed information communicated by the Federal Chamber of Labour regarding young workers and apprentices. It notes that the number of places for trainees in the courses run under the Youth Guarantee Act decreased from 4,097 in 2008 to 414 in 2010. This apparently shows that it was not possible to place all the young apprenticeship seekers in in-house apprenticeships, since the industry has been withdrawing more and



more from apprenticeship training over the past few years and the supply of places for apprentices has not kept pace with demand. According to the Federal Chamber of Labour, the authorities considered that pressure is continuing on the apprenticeship market despite some new measures introduced to promote apprentice training. Further measures must therefore be taken to enable apprenticeship seekers to obtain consistent training and thus ensure that young persons complete their vocational training as a basis for their future working life and have good prospects in the labour market. The Government indicated in its report that key focus was given to the optimization of labour market opportunities for young persons as it was the 15–24 year age group that was seriously affected by the financial and economic crisis which shaped labour market policy in 2009 and 2010. Among other measures, new vocational schools were established to provide young persons with basic schooling as well as social and educational support for a gradual introduction into the labour market through a combination of work and learning. ***The Committee invites the Government to include detailed information in its next report on the efforts made to provide skills to young persons, and the results achieved in terms of ensuring lasting employment for young persons who enter the labour market.***

## Barbados

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1976)**

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes the information contained in the Government's report received in October 2011 in reply to its 2009 observation. The Government indicates that pursuing the objectives of full, productive and freely chosen employment was affected by the economic recession brought about by the global financial crisis and the rapid increase of energy and commodity prices. In the first quarter of 2010, the labour force participation rate was 67.2 per cent (73.5 per cent for men and 61.4 per cent for women) and the employment rate was 89.4 per cent (89.5 per cent for men and 89.3 per cent for women). The unemployment rate almost doubled from 6.7 per cent in June 2007 to 12.1 per cent in June 2011 with a higher increase in tourism, construction, and wholesale and retail trade sectors (from 9.8 per cent in June 2007 to 16 per cent in June 2011). The Government indicates that active employment measures are outlined in the 2010–14 Medium-Term Development Strategy and Medium-Term Fiscal Strategy documents. The Manpower Research and Statistical Unit of the Ministry of Labour and Social Security is drafting the National Employment Policy. These policies are supported by the social partnership. They primarily aim at maintaining macroeconomic stability, stimulating economic growth and development, raising standards of living, meeting manpower requirements, and reducing unemployment and underemployment. In a communication of August 2011, the Barbados Workers' Union states that it welcomes any policy interventions which promote access to employment in conformity with the standards as enunciated in the Decent Work Agenda. The Government indicates that it received ILO technical assistance for developing the Decent Work Country Programme (DWCP). The last version of the DWCP will be submitted to the Cabinet once the tripartite consultation process is completed. The Committee notes that one of the priorities of the DWCP is strengthening employment policies through, inter alia, enhancing the labour market information system and the capacity of the National Employment Bureau. The DWCP also aims at developing a culture of entrepreneurship and strengthening local entrepreneurs to be competitive. ***The Committee invites the Government to provide in its next report information on the impact of the active measures taken for promoting employment, including in the framework of the National Employment Policy, on reducing unemployment and underemployment and increasing employment levels within the framework of a coordinated economic and social policy. The Committee also requests the Government to provide detailed information on the impact of the measures taken to address the needs of vulnerable categories of workers, such as women, young people, older workers and workers with disabilities. Please also provide information on the impact of the employment promotion activities carried out under the DWCP.***

*Education and vocational training.* The Committee notes that the Barbados Vocational Training Board (BVTB) conducts a range of courses for both employed and unemployed persons of various ages in order for them to upgrade their skills, to be retrained or to acquire new skills. The training is intended to develop multiskilled individuals and is delivered through apprenticeship, in-plant training and evening programmes. The Government indicates that the most recent study conducted by the BVTB on 459 persons who attended at least one of its training courses during a 12-month period revealed that about 60 per cent of those surveyed are employed after the training, but 40 per cent have responded that they are employed in areas outside their training. The Committee notes that one of the priorities of the DWCP is to enhance technical and vocational education and training, to promote lifelong learning and to equip the labour force with the skills to function in the global economy. ***The Committee invites the Government to provide information on the impact of the measures adopted in collaboration with the social partners to improve the education and training system and to enhance its labour market relevance so as to align the demand and supply of skills.***

*Participation of social partners.* The Government indicates that the social partnership, which includes leaders of the Government, employers' and workers' organizations, engages in quarterly discussions on social and economic issues confronted by the country. Social partners also participate in annual national consultation on the economy, which is held among representatives across all economic sectors. ***The Committee invites the Government to provide in its next report other examples of the manner in which the views of the social partners are taken into account in the development, implementation and review of employment policies and programmes. The Government is also requested to provide***

*information on whether consultations are carried out with representatives of the rural workers and the informal economy.*

## **Brazil**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

*Articles 1 and 2 of the Convention. Implementation of an active employment policy in the framework of a coordinated economic and social policy.* The Committee notes the Government's report received in November 2011 in reply to its 2009 observation. The report prepared by the Secretariat for Public Employment Policies (SPPE) contains brief information on the labour market, a review of the activities of the Public Employment, Labour and Income System (SPETR) and of the activities of the Job and Income Generation Programme (PROGER). The Committee notes the significant reduction of informal work and the increase of 6.5 per cent in the number of registered employees in major urban centres. Although the acceleration of economic growth fell off in 2011, it is hoped that economic growth will increase once again in 2012 (the growth rate fell from 7.5 per cent in 2010 to 2.9 per cent in 2011, and a growth rate of 3.5 per cent is forecast for 2012). The Government emphasizes that the positive dynamic of macro-economic indicators resulted in the unemployment rate being reduced from 7.5 per cent in May 2010 to 6.4 per cent in May 2011. According to the data published by the Economic Commission for Latin America and the Caribbean (ECLAC) and the ILO, over 2 million jobs were created in 2011. The Committee observes that the unemployment rate of women fell from 8.8 per cent in 2010 to 7.7 per cent in 2011, and that the youth unemployment rate fell from 16.7 per cent in 2010 to 15 per cent in 2011. ***The Committee invites the Government to provide information in its next report on the policies and programmes adopted to promote full employment. The Committee would like to examine a report containing indications on the manner in which the policies and programmes implemented have resulted in productive and long-term job opportunities for young persons and women, and the manner in which the social partners collaborated in their implementation. Please also provide information on the efforts made to continue the integration into the formal economy of unregistered workers. The Committee invites the Government to provide up-to-date information on the situation and trends in the labour market, disaggregated by state, sector, age, sex and skills, particularly with regard to socially vulnerable groups, such as young persons, women jobseekers, ethnic minorities and persons with disabilities (Articles 1(2) and 2(a) of the Convention).***

*Support for small and micro-enterprises and for cooperatives.* The Committee notes the efforts made by the Government through the distribution of significant resources to democratize productive credit through the PROGER programme. In 2010, approximately 8,036 million reales were distributed (equivalent to around US\$4,450 million) for entrepreneurial activities in 3,477 municipal areas. In February 2011, further measures were adopted to promote small enterprises in the formal economy and self-employed workers. The Government also provides information on the positive impact in terms of job creation of the loans made available to micro- and small enterprises in the context of the urban PROGER programme between 2000 and June 2009. ***The Committee invites the Government to continue to provide information on the activities of the PROGER programme and their impact in promoting productive employment. Please also indicate whether a new legal framework for cooperatives has been developed with a view to promoting job creation.***

*Contribution of the employment services.* The Government refers in its report to the Employment Service Convention, 1948 (No. 88), and indicates that the Public Employment Labour and Income System (SPETR) includes a series of public policies seeking to be more effective in placing workers in productive activities with the objective of achieving social inclusion through employment, labour and income. According to the Government, the public system developed in a fragmented manner and its consolidation is an important challenge for the Ministry's programme. ***The Committee invites the Government to describe in its next report the progress achieved in ensuring that the public employment services contribute fully to the achievement of the objectives of the Convention.***

*Article 2(a). Collection and use of employment data.* The Government recalls that two principal registers are kept of the functioning of the labour market: the General Register of Employed and Unemployed Persons (CAGED) and the Annual Social Information Report (RAIS). Moreover, a monthly survey on employment and unemployment is carried out (PED). ***The Committee invites the Government to specify in its next report the manner in which the information compiled contributes to the adoption and review of the policies and programmes implemented to promote full employment.***

*Educational and vocational training policies.* In its previous observation, the Committee noted that the Social and Vocational Training Programme (QSP) had been the channel through which vocational training was provided to 664,850 workers between 2003 and 2007 to provide them with the necessary qualifications for employment. In 2008, a total of 39 training programmes were carried out for specific economic sectors. Furthermore, focusing on the construction sector, the Government promoted initiatives for vocational training and the placement of beneficiaries of the *Bolsa Familia* programme. ***The Committee requests the Government to provide information in its next report on the impact of the QSP and other initiatives adopted to offer workers the opportunity to receive the necessary training to enable them to find appropriate employment and to use their training and skills in such jobs. The Committee also invites the***

*Government to provide information on the consultations held with the social partners in the context of education and training policies and on their relation to employment opportunities.*

## Cambodia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

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 2011 observation.

*Articles 1 and 2 of the Convention. Coordination of social and economic policy with poverty reduction.* In its report received in August 2011, the Government referred to the implementation of the Rectangular Strategy Plan, Phase II 2009–13. The Committee noted that the Government's six priorities in setting up the aforementioned action plan are as follows: (1) employment creation; (2) improving working conditions; (3) enforcement of the rule of law in social security matters; (4) building and development of technical and vocational skills; (5) expansion and strengthening of gender mainstreaming in the labour market; and (6) strengthening cooperation between institutions, work efficiency and accountability. The Committee also noted that the Government has set up a policy on labour migration. *The Committee invites the Government to provide information in its next report on the results achieved and the difficulties encountered in attaining the employment policy objectives in the Rectangular Strategy Plan, Phase II 2009–13. In addition, the Committee asks the Government to provide information on how it intends to meet, in the context of its new labour migration policy, the employment needs of migrant Cambodian workers.*

*Employment trends.* The Committee noted in its previous observation that data concerning labour market and employment trends are compiled by the Department of Labour Market Information operating under the auspices of the Ministry of Labour and Vocational Training. Due to a lack of resources and reorientation of officials responsible for the data collection to other positions, the Government was unable to submit new relevant information on employment trends. *The Committee hopes that the Government will supply detailed statistical information in its next report on the nature and extent of the country's labour market and employment trends. It also requests the Government to indicate the manner in which labour market data is collected and used to determine and review employment policy measures.*

*ILO technical assistance.* The Government indicated in its August 2011 report that the "Better Factories Cambodia" programme has led to improved compliance by Cambodian export garment factories of national and international labour standards. This has contributed to Cambodia's national social and economic growth as export garment factories continue to win over and retain key international buyers who are weary of poor labour standards. *The Committee invites the Government to include in its next report updated information on the implementation and results of the "Better Factories Cambodia" programme in terms of employment creation.*

*Regional development and rural employment.* The Committee previously noted that the Cambodia–Laos–Viet Nam Development Triangle Area (CLV–DTA) is a multilateral agreement that focuses on economic, political and social objectives in the subregion. Among the social objectives mentioned in the report, the Government referred to several labour-related objectives, such as hunger eradication and poverty reduction. *The Committee requests the Government to provide additional information on how the measures taken under the CLV–DTA have promoted the objective of full and productive employment. Please also indicate how the objectives of overcoming poverty, eradicating hunger, reducing social inequalities and ensuring sustainable development have been achieved. The Committee invites the Government to continue to include information on the measures taken to reduce regional disparities so as to attain a better balance in the labour market.*

*Youth employment.* The Committee previously requested information on the specific measures adopted by the Government aimed at generating employment opportunities for youth. *The Committee once again invites the Government to provide in its next report detailed information on the adoption of a youth policy action plan and the results achieved to promote productive employment of young persons.*

*Educational and training policies.* The Committee previously requested that the Government continue to provide information on the effects of educational and training measures adopted by the National Training Board. *The Committee once again invites the Government to provide in its next report detailed information on the measures taken to improve qualification standards and coordinate education and training policies with employment opportunities.*

*Article 3. Participation of the social partners.* The Committee previously requested information as to how the Government involves representatives of employers and workers in the formulation and implementation of employment policies. *The Committee once again invites the Government to address this essential issue in its next report by demonstrating how 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 pursuance of an active employment policy.* In reply to the 2010 observation, the Government provided a report received in September 2011 containing a list of the principal programmes established to promote employment. The Government identifies the five main programmes implemented by the National Training and Employment Service (SENCE) to generate employment and promote the integration into the labour market of women, young persons and workers in a precarious situation. The "Investment in the Community" programme includes initiatives implemented by SENCE or the regional authorities for the direct and transitional recruitment of unemployed persons in areas with high levels of dismissals. The "Recruitment Bonus" programme consists of the distribution of subsidies to enterprises covering the payment of 30 per cent of the minimum monthly income. The "Employment Support" programme is intended for unemployed persons covered by the *Chile Solidario* social protection system to help them develop their skills with a view to strengthening their employability. A specific programme is

intended to develop the labour skills of women. The Government has also adopted measures to provide tax breaks and training vouchers for persons wishing to obtain training. ***The Committee invites the Government to include in its next report quantitative and qualitative data disaggregated by programme so that it can examine the manner in which the programmes adopted have enabled beneficiaries to obtain productive and long-term jobs.*** The Committee notes that, according to the data published by the ILO in *Panorama Laboral 2011*, the economy grew by 6.8 per cent in the second quarter of 2011 (with an annual growth rate of 8.4 per cent in the first quarter). Between January 2010 and September 2011, the urban employment rate increased (from 53.2 to 55.5 per cent) and the unemployment rate also fell between 2010 and 2011 (from 8.5 to 7.3 per cent). The Committee refers to its previous observations and recalls that it is fundamental to be able to assess the manner in which the political commitment to achieve full employment is reflected in government policy documents and in the general legal context. ***The Committee hopes that the Government will include in its next report detailed information on the adoption and implementation of an active employment policy, as required by Articles 1 and 2 of the Convention. The report should also provide up-to-date data on the size and distribution of the labour force and the nature, extent and trends of unemployment and underemployment.***

***Youth unemployment.*** The Government also describes the SENCE programmes intended to ensure decent employment conditions for young persons entering the labour market. The Committee notes the requirements that have to be met to receive the monthly subsidy that the Government offers employers which recruit a young person up to 25 years of age. The Government also refers to the skills training programme for young persons and apprentices up to 25 years of age. The Committee notes that the average unemployment rate for young persons between 15 and 24 years of age in the first nine months of 2011 was around 17.5 per cent, which is 1.1 per cent lower than the corresponding rate for the same period in 2010. ***The Committee invites the Government to provide in its next report information on the results achieved by the measures adopted for the integration of young persons into the labour market and to help them obtain high-quality jobs.***

***Coordination of vocational education and training measures with employment policy.*** The Government indicates that the training programmes provided by ProEmpleo are designed to be adapted not only to the interests of beneficiaries but also to labour market demand. Through this coordination, it is ensured that training and skills development facilitate the integration of beneficiaries into the labour market. ***The Committee invites the Government to provide up-to-date information in its next report so that it can assess the manner in which the beneficiaries of the measures taken by the SENCE find long-lasting employment. The Committee also requests the Government to provide more precise information on the coordination of vocational education and training policies with employment policy.***

***Participation of the social partners.*** In its previous comments, the Committee invited the Government to provide information on 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 employment policy. The Government indicates that the Ministry of Labour has a social dialogue unit, which has a training programme and holds social dialogue meetings. The Committee notes that the objective of the social dialogue meetings is to promote the generation of dialogue machinery at the national and regional levels in high-priority sectors, such as employment policy, so as to influence the establishment of public policies which resolve the problems identified. The social partners participate in social dialogue meetings. The Government also refers to the existence of regional dialogue meetings, depending on the productive sector. ***The Committee invites the Government to continue to provide information on the consultations held with the social partners for the design and implementation of an active employment policy. In this respect, the Committee emphasizes the importance of taking into account the views and securing the support of the social partners so as to ensure that the programmes implemented generate high-quality jobs (Article 3). In particular, the Committee reiterates its interest in examining information on formal consultation procedures with the social partners on the matters covered by the Convention at both the national and regional levels, including representatives of the rural sector and the informal economy.***

***ILO technical assistance.*** The Government indicates that in 2011 ProEmpleo held two workshops with ILO assistance. In the first, emphasis was placed on the need to ensure the follow-up of programmes to promote the reintegration into the labour market of the unemployed. In the second, the need was identified to give priority to access to employment and recruitment subsidies for the most vulnerable persons in the labour recruitment incentives programme. ***The Committee invites the Government to continue to provide information on the action taken as a consequence of assistance or advice received from the ILO for the adoption and implementation of an active employment policy, as required by the Convention (Part V of the report form).***

## China

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1997)**

***Formulation and implementation of an active employment policy.*** The Committee notes the detailed information provided by the Government in September 2011 in reply to its previous observation. It notes the 12th Five-Year Plan for National Economic and Social Development, which sets out employment strategies based on the development of the industry and service sectors. The Committee also notes the adoption of the National Human Rights Action Plan of China (2012–15) which refers to, inter alia, the right to work and the right to basic living standards. The Government reports on

the establishment of the Inter-Ministerial Joint Meeting System on Employment to ensure policy coordination and help promote employment. Tripartite dialogue has been strengthened to cope with the global financial and economic crisis and seek common development goals. In response to the crisis, measures taken by the Government to promote employment include boosting domestic consumption, reducing social insurance contributions of enterprises, and offering subsidized targeted training opportunities to workers, jobseekers and unemployed persons. The Government also reports that the employment situation has been stabilized by creating 11.68 million new jobs for urban residents, re-employing 5.47 million laid-off workers, and employing 1.65 million persons from groups with employment difficulties. The Committee notes that the urban registered unemployment rate dropped to 4 per cent in 2011 (as per IMF data) from 4.1 per cent in 2010 and 4.3 per cent at the end of 2009. ***The Committee invites the Government to continue to provide information in its next report on the formulation and implementation of an active employment policy with the involvement of the social partners and on the impact of the measures taken to generate productive employment (Articles 1, 2 and 3 of the Convention).***

***Impact of legislation on employment creation.*** The Government indicates that, in order to attain the objective of full employment, it implements active employment policies and incorporates such policies into legislation through the Employment Promotion Law. New legislation also provides for the adoption of measures aimed at increasing employment in the areas of tax, finance, social insurance, unemployment insurance and other matters. With respect to labour and social insurance policies, the Government indicates that it will take measures to gradually improve and implement flexible labour and social insurance policies that are compatible with flexible employment, including part-time employment, providing help and services to employees under flexible 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 legislation and related practice and implementation.***

***Vulnerable groups.*** The Government indicates that it attaches great importance to youth employment. The Committee notes that China is facing challenges with regard to the employment of graduates from institutions of higher learning and young migrant workers. The number of graduates has increased from 3.38 million in 2005 to 6.3 million in 2010. The Government indicates that it has formulated policies to promote employment for graduates, including plans to increase employment opportunities, a plan to guide business start-up and a plan of employment service and assistance. It reports that employment internships were provided to 1 million graduates with allowances paid by governments or employers, and that 450,000 graduates will benefit from the business start-up plan in the 2010–12 period. With respect to young migrant workers, the Government reports on measures easing their access to employment in urban areas, support measures to start up businesses, and vocational and technical training measures. It also reports on the measures to promote the employment of migrant workers based on the principle of fair treatment without discrimination. The Government indicates that it will improve management and overall planning of urban and rural areas, taking measures in accordance with the local conditions and providing guidance based on specific needs. Furthermore, the Committee notes the information on measures targeting the employment of women, including social security and vocational training subsidies, entrepreneurial trainings and measures to improve the maternity insurance system. The Government indicates that these measures have effectively promoted the employment of women. By the end of 2009, urban employers employed a total of 125.3 million persons, of which 46.785 million were women (37.2 per cent). It also provides data indicating that, from 2005 to 2009, public employment service agencies helped a total of 94.807 million persons obtain jobs, of which 44.514 million were women. With respect to persons with disabilities, the Government provides updated statistics indicating that 4.412 million persons with disabilities were employed in urban areas and 17.497 million in rural areas in 2010. The Committee also notes the information provided by the Government on measures to promote the employment of ethnic minorities. They include the formulation and improvement of employment policies, the increase of employment aid for college graduates of ethnic minorities facing difficulties in finding jobs, the development of special training activities and work programmes, and the increase in financial support. ***The Committee invites the Government to provide in its next report information on the impact of the measures taken in order to promote productive employment for vulnerable categories of workers. Please also include updated data on the situation and trends of the active population, employment, unemployment and underemployment disaggregated by sector, age, sex, in particular for vulnerable groups such as young persons, women, persons with disabilities, rural workers and ethnic minorities.***

***Ensuring re-employment of laid-off workers by state-owned enterprises.*** The Government reports that the unemployment insurance system has basically covered most laid-off workers of state-owned enterprises. It further reports that in 2008, following the implementation of the Employment Promotion Law, the proactive employment policies continued, expanding from focusing on addressing the re-employment of laid-off and unemployed persons of state-owned enterprises to focusing on addressing the overall plan of employment of various groups in urban areas. The Government indicates that this has expanded the scope of objects, extended the validity period of policies and its increased efforts. ***The Committee invites the Government to continue to provide information in its next report on this matter.***

***Consistency and transparency of labour market information.*** The Government reports that it has established a city-based labour market information network. Over 80 per cent of public employment service agencies have set up information systems and in some locations these networks have extended to rural areas. The Government further indicates that a decision was taken in 2010 to establish an employment information monitoring platform to track the employment and unemployment status of jobseekers. It is estimated that approximately five years will be needed in order for the

information network to cover the whole country. Furthermore, in 2011 the Government decided to set up a national public recruiting information service platform in order to increase consistency and transparency of the labour market and help jobseekers obtain timely and accurate labour market information. ***The Committee invites the Government to continue to provide information on the progress made in order to obtain accurate employment data and how it is being used to formulate and review employment policies (Article 2).***

***Constructing a unified labour market.*** The Government indicates that it has abolished policies and regulations that restrict the rural labour force to be employed in urban areas and transregionally. It further indicates that it is steadily and proactively pushing forward the reform of the household registration system. The Committee notes that conclusions are to be drawn from the experiences in the pilot efforts for coordinating urban and rural employment, and the scope of the pilot efforts is to be expanded. It further notes that in 2010 public employment service agencies at all levels nationwide provided gratuitous employment service to migrant workers, distributed over 35 million employment information cards, held nearly 20,000 special recruitment fairs for migrant workers, recommended jobs to more than 23 million persons, of which 12.5 million succeeded in obtaining employment, and arranged for over 30.9 million workers to obtain employment abroad. ***The Committee invites the Government to provide further information on the measures taken to unify employment management and the results achieved by the employment services in providing the same level of services in the country. The Committee invites the Government to include in its next report an evaluation on how a balanced growth between economic development and employment has been achieved among the different regions of the country.***

***Strengthening employment services.*** The Government previously indicated that, in 2008, 99 per cent of the urban neighbourhoods and 80 per cent of towns had set up public employment services that provide assistance and job placement services. The Government reports in 2011 that 90 per cent of towns have set public employment services. Furthermore, the Committee notes that by the end of 2010, more than 10,000 private employment agencies operated in the country. ***The Committee invites the Government to provide detailed information on the operation of private employment agencies. It also invites the Government to continue 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 noted in its previous observation that 82 cities had been selected to pilot a new initiative aimed at promoting small and medium-sized enterprises. In its report, the Government indicates that it has made efforts to create entrepreneurial cities in 85 cities. It further indicates that it is conducting an assessment of the work performance of these entrepreneurial cities, evaluating the work completed and the actual results in the cities undertaking the tasks through information reviews, data comparisons and survey questionnaires. The Government also reports on measures to support entrepreneurship and promote small and medium-sized enterprises. These measures include reducing administrative barriers, enhancing entrepreneurial training, improving financial services to entrepreneurs and granting preferential tax rates to entrepreneurs and small and medium-sized enterprises. The Committee notes that the Government has set up a technology innovation fund which grants financial support to scientific and technological innovation projects. ***The Committee invites the Government to include in its next report information on the impact of measures promoting small and medium-sized enterprises with respect to employment creation.***

***Vocational training and education policies.*** ***The Committee invites the Government to include information in its next report 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 invites the Government to report on how the local entities and social partners participate in the design and implementation of training policies and programmes.***

***Article 3. Participation of the social partners.*** The Government indicates in its report that more than 10,000 tripartite consultation organizations have been established at all levels across the country. It further reports that the 16th National Tripartite Conference of Labour Relations Coordination was convened in 2011. The conference adjusted the composition of the members of the State Tripartite Conference and its office; revised the Tripartite Conference System; reviewed the national harmonious industrial relations models of enterprises and industrial parks; and thematically studied the work to further put forward the implementation of special actions for the small business contract scheme, and the implementation of the collective contract scheme of the “Rainbow Programme”. ***The Committee invites the Government to continue to provide information on the consultations held with the social partners concerning the formulation and implementation of an active employment policy.***

***ILO technical cooperation.*** ***The Committee invites the Government to provide information in its next report on the results obtained through ILO technical assistance on the matters covered by the Convention and also on the results derived from the implementation of the Decent Work Country Programme (2006–10).***

## Djibouti

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1978)**

The Committee notes with *regret* that the Government has not sent a reply to its 2007 observation. Nevertheless, noting the information provided by the Government in its reports received in May 2008 on the application of the Employment Service Convention, 1948 (No. 88), the Employment Policy Convention, 1964 (No. 122), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and with reference to its previous comments on Convention No. 96, the Committee requests the Government to provide a report containing information in response to the following questions:

*Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit.* Previous observations reveal that the proliferation of private employment agencies following the liberalization of employment under Decree No. 11/PRE/97 has resulted in a reduction of the activities of the public employment service. According to previous observations from the General Union of Djibouti Workers (UGTD) and the Labour Union of Djibouti (UGT), fee-charging employment agencies have been legalized in Djibouti and are acting as filters for recruitment. Furthermore, the unions alleged that these agencies charge jobseekers and even deduct sums illegally from workers' wages. The Committee notes that section 7 of Decree No. 2004-0054/PR/MESN of 1 April 2004 concerning private employment agencies expressly prohibits the latter from imposing charges or fees on workers. Moreover, section 14 of the same Decree provides that private employment agencies are required to send the labour inspector and the National Employment Service (SNE) a monthly summary of contracts concluded. The Committee notes that, under section 31 of Act 203/AN/07/5th L of 22 December 2007 establishing the National Agency for Employment, Training and Vocational Placement (ANEFIP), one of the tasks of the latter is to monitor the application of the provisions of Decree No. 2004-0054/PR/MESN concerning private employment agencies. *The Committee requests the Government to state the specific measures taken to monitor the activities of agencies covered by the Convention, providing a summary of the reports of the inspection services, information on the number and nature of infringements reported and also any other available information, particularly with regard to the recruitment and placement of workers abroad.*

*Revision of Convention No. 96.* The Committee recalls that, the ILO Governing Body, during its 273rd Session in November 1998, invited the State parties to Convention No. 96 to contemplate the possibility of ratifying, if appropriate, the Private Employment Agencies Convention, 1997 (No. 181). Such ratification would entail the immediate denunciation of Convention No. 96. Consequently, as long as Convention No. 181 has not been ratified by Djibouti, Convention No. 96 remains in force in the country, and the Committee will continue to examine the application of Part II of the Convention in national law and practice. *In this regard, the Committee refers to its comment on Convention No. 144 and requests the Government to indicate whether tripartite consultations have been held within the National Council for Labour, Employment and Vocational Training with a view to the ratification of Convention No. 181.*

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

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1978)**

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 2008 observation, which read as follows:

*Article 1 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the creation of the National Employment, Training and Vocational Integration Agency (ANEFIP), which is responsible for implementing national policies and programmes relating to employment, vocational training and vocational integration. The Committee also notes the establishment of the Djibouti Social Development Agency (ADDS), which has the task of contributing to the eradication of poverty among vulnerable groups and reducing disparities between regions. The Government intends, in the context of the implementation of the poverty reduction strategy, to promote labour-intensive activities, vocational training, the development of small and medium-sized enterprises and microfinance. With regard to microfinance, funding given to women's organizations seems to have met with some success. *The Committee hopes that the Government will provide information in its next report on the results achieved by the ANEFIP and ADDS to implement an employment promotion and poverty reduction strategy, including updated quantitative information on the development of the programmes put in place to promote the objectives of the Convention.*

*Article 2. Collection and use of employment data.* The Government indicates that the development of information on employment is one of the tasks of the ANEFIP. To that end, section 32 of Act No. 203/AN/07/5thL provides for the creation of an Employment and Qualifications Observatory. The Observatory will be responsible in particular for establishing an employment database and carrying out specific surveys in this field. *The Committee invites the Government to provide information in its next report on the progress made by the Employment and Qualifications Observatory in collecting data on employment as well as on the employment policy measures adopted following the establishment of the new labour market information systems.*

*Article 3. Participation of the social partners.* *The Committee requests the Government to provide information in its next report on any consultations held on employment policies in the National Labour, Employment and Vocational Training Council.*

*Part V of the report form. ILO technical assistance.* The Committee notes that, under the ILO's Decent Work Country Programme (DWCP) in Djibouti for 2008–12, priority is given to job creation, with particular emphasis on women and young people, and to access to employment through vocational training. *The Committee requests the Government to indicate in its next report the results achieved during the implementation of the DWCP in terms of job creation.*

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

## Ecuador

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1972)**

*Formulation of an employment policy. Labour market situation.* The Committee notes the Government's report received in October 2011 containing replies to its 2010 comments and a copy of the Ecuador Productive Agenda. The Ecuador Productive Agenda 2010–13 envisages improving labour productivity, decent wages and the generation of job opportunities without any type of discrimination. The Government indicates in its report that priority is given in the action of the Ministry of Labour Relations to intensive vocational training, especially targeted at the most vulnerable social groups, the abolition of precarious forms of labour, the creation of employment programmes for youth and the articulation of the supply of vocational training with the National Economic Inclusion Plan. The Committee observes that the Ecuadorean economy grew by 8 per cent in 2011. According to ECLAC in its *Preliminary Overview of the Economies of Latin America and the Caribbean*, economic growth continues to be led by internal demand, the principal motor of which has been strong public expenditure. The unemployment level fell from 7.6 per cent in 2010 to 6 per cent in 2011. There was also an improvement in the quality of employment as the underemployment rate was 46 per cent in September 2011, 4 percentage points lower than the rate in September 2010. ***The Committee invites the Government to continue to provide information to enable it to examine the progress made in achieving the objectives of full and productive employment set out in Articles 1 and 2 of the Convention. The Committee invites the Government to provide information on the discussions held in the National Labour Council on the formulation and implementation of an active employment policy. The Committee hopes that the Government will include examples of the manner in which citizen's participation in people's assemblies has made it possible to take into account the views and experience of the persons affected by employment policy measures, and particularly those working in the rural sector and the informal economy (Article 3).***

*Compilation of labour market data. Coordination of employment policy with economic and social policy.* The Committee welcomes the inclusion in the Government's report of the detailed employment statistics of the National Institute for Statistics and Censuses (IMEC). ***The Committee invites the Government to continue to provide up-to-date information on the situation, level and trends of employment, unemployment and underemployment and on the employment situation of the most vulnerable categories of workers, such as women, youth and rural workers. The Committee also invites the Government to indicate the manner in which the information that is compiled has contributed to the analysis of the labour market and to the adoption of new employment policy measures in the framework of a coordinated economic and social policy.***

*Youth employment.* The Government indicates that the programme *Mi Primer Empleo* has achieved good results by providing the opportunity to undertake paid traineeships for young persons between 18 and 29 years of age studying in institutions recognized by the Higher Education Council. Five per cent of the internships are for young persons with disabilities. In 2011, something over US\$2 million was available to subsidize internships. ***The Committee invites the Government to provide further information in its next report on the effect achieved by the measures adopted to help young persons find long-term employment and remain in the labour market.***

*Regional integration and rural development.* In reply to its previous comments, the Government enumerates the functions of the Undersecretariat for National and Territorial Planning and Public Policies. ***The Committee invites the Government to provide more detailed information on regional development policies to ensure a balanced distribution of economic activity in the country.***

*Small and medium-sized enterprises.* The Government indicates that the Undersecretariat for Micro, Small, Medium-Sized Enterprises has a budget of US\$90 million to implement support programmes over three years for micro-, small and medium-sized enterprises, intended to improve their productivity and competitiveness and to develop productive networks. ***The Committee invites the Government to provide more detailed information on the labour market impact of programmes to promote the creation of productive employment through micro-, small and medium-sized enterprises. The Committee reiterates its request to the Government to indicate the most effective programmes to help precarious workers and those in the informal economy to find productive and lasting employment.***

*Coordination of education and training policy with employment opportunities.* In reply to previous comments, the Government indicates that productive assets, such as land and credit, are badly distributed in the country, and labour is the only real asset available to people for integration into productive life and to overcome poverty. The relatively low unemployment rate conceals a structural problem of precarious work in the labour market and the quality of the work that is in demand. The analysis made in the Productive Agenda shows that sectors with low added value are those in which the largest proportion of the labour force, mainly low-skilled, is concentrated. The national survey of micro-, small and medium-sized enterprises in the manufacturing industry, carried out in January 2008 at the initiative of the Ministry of Industry and Competitiveness and the National Federation of Chambers of Small Industry of Ecuador (FENAPI), found that, of the 4,000 enterprises assessed in all provinces in 2007, those which prepared their employees the most were medium-sized enterprises and small enterprises (76 per cent and 58 per cent of enterprises, respectively). The enterprises that contributed the least to developing the productive skills of their workers were micro-enterprises, which only trained 33 per cent of them. According to the Productive Agenda, it is necessary to work intensively in cooperation with employers to develop the productive skills of their employees. In its General Survey concerning employment instruments, 2010, the Committee also emphasized the increasingly important role of the social partners and training institutions in



determining human resources development strategies. *The Committee invites the Government to indicate in its next report the manner in which workers' and employers' representatives have contributed to the development of vocational training mechanisms. The Committee reiterates its interest in being able to examine information enabling it to assess the impact of the measures adopted by the National Vocational Training Council for the coordination of vocational education and training policies with employment opportunities.*

## El Salvador

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1995)**

The Committee notes the full information received from the Government in September 2011 in relation to the 2010 direct request.

*Active policy intended to promote full employment.* The Government indicates in its report that the efforts of the public and private sectors to intervene and contribute to the generation of decent employment, including the micro-enterprise sector, are articulated around the establishment of the National Employment Network (RENACEMPLEO) and employment grants. The Government includes information on the activities undertaken by the RENACEMPLEO and the employment fairs in 2009, 2010 and January–July 2011. The Government adds that it received technical assistance from the Government of the United States (USAID) to make an assessment of the form in which employment fairs are held and from the Japan International Cooperation Agency (JICA) to improve the labour mediation system. The Committee notes that a process of consultation was initiated for the formulation of a national employment policy. In June 2010, the Higher Labour Council decided to work on the development of a national employment policy based on the consensus points agreed to in a national employment pact. The Committee notes that, according to official projections, the working-age population will rise from 3,790,000 to 4,240,000 persons between 2010 and 2020, which will require the generation of approximately 455,000 new jobs by the end of the decade, that is an average of a little over 45,500 jobs annually during the period under consideration. According to the data published by ECLAC, 12,500 formal jobs were created in the first half of 2010. The Committee refers to paragraph 785 of its General Survey of 2010 concerning employment instruments, in which it indicated 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 recalls that *Article 2 of the Convention* sets out that member States shall implement a framework of a coordinated economic and social policy, which is to be clearly defined and declared. *The Committee invites the Government to indicate whether a national employment plan has been established so as to implement an active policy intended to promote full, productive and freely chosen employment. The Committee hopes that updated information will be included in the next report on the activities carried out by the RENACEMPLEO with a view to identifying the size and distribution of the labour force, and the nature and extent of unemployment as an essential phase in implementing an active employment policy within the meaning of the Convention. The Committee requests the Government to include information on the efforts made to hold consultations with the social partners, as required by Article 3 of the Convention. In this respect, the Committee emphasizes the importance of taking into account the views and securing the support of the social partners in order to ensure that the programmes implemented generate quality employment. The Committee reiterates its request for information to be included on the consultations held with all the sectors affected, including representatives of the rural sector and the informal economy.*

*Impact of trade agreements.* The Government indicates that the impact of trade agreements is seen through the development of programmes to generate employment in public works and the support that is provided to micro-enterprises and self-employment in rural areas of the country. *The Committee invites the Government to include information in its next report on the impact on the labour market of the development of export-oriented productive sectors, both for manufactured products and for goods of the rural economy.*

*Vulnerable groups.* The Government indicates that 51 per cent of the clients of the Public Employment Service are women. In addition, a government programme was established for women (*Ciudad Mujer*) intended to provide specialized services gathering together at the same location the state institutions offering specialized services for women. Self-employment fairs are held for older adult women. Using World Bank funding, temporary income support is provided in the 25 urban municipal areas identified as those most in need for women heads of household and young persons between 16 and 24 years of age without formal employment and belonging to poor households. The Committee also notes other initiatives to support employment and rural production. The Government recognizes that the promotion of youth employment is a challenge and is aiming to reduce the levels of youth unemployment and poverty by providing young persons with a process of support through vocational training and labour market integration initiatives. *The Committee hopes that the next report will include more specific information on the measures adopted to strengthen programmes to facilitate the integration of youth and women into the labour market and on the results achieved through such measures. The Committee asks the Government to provide information on the situation, level and trends of employment, unemployment and underemployment, with an indication of the extent to which the most vulnerable sectors are affected (women, youth, the poorest sectors of the rural population and workers in the informal economy). The Committee would be grateful to continue examining information that enables it to assess the impact achieved by the measures adopted to facilitate the entry into the open labour market of persons with disabilities.*

*Micro-, small and medium-sized enterprises.* The Committee notes the action taken between June 2009 and May 2010 in the context of the Support Strategy for Small and Micro-Enterprises 2010–14, including the data on the number of services provided and beneficiary entrepreneurs. ***The Committee invites the Government to continue to provide information on the impact of the measures adopted to promote entrepreneurial development and to improve the competitiveness and sustainability of micro-, small and medium-sized enterprises.***

## Germany

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

*Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy.* Following the 2010 observation, the Government provided in September 2011 a general review of the economic situation and labour market developments for the period June 2009 to May 2011. During the period considered, the Government's objective was to overcome the drastic decline in economic growth as rapidly as possible and to set new impulses for a stable, dynamic recovery. Labour market employment opportunities were improved for young persons and the fiscal burden was lowered on companies and employees. The Committee notes that developments in the German labour market have been positive. The number of unemployed in the second quarter of 2010 was below the 3 million mark (April–June 2010: 2,919,100 persons were unemployed, and a further reduction was observed in the same period of 2011: 2,472,000 were in unemployment in April–June 2011 according to the data made available to the ILO). The Government stated that the decline in unemployment, which was reached before the global economic crisis started affecting the labour market in October 2008, was not exclusively the result of cyclic effects but due to the success of labour market reforms, such as the reform of the Federal Employment Agency. Under new legislation, it was possible to reduce structural unemployment and measures were taken to counteract the consolidation of long-term unemployment (since 2007, long-term unemployment has fallen by more than eight percentage points). The Government indicates that the reforms notably increased the matching efficiency of the labour market. Candidates find work more quickly and easily and thus spend less time looking for jobs. A further prerequisite for matched placement is that the people concerned should be appropriately qualified to satisfy job market requirements. People with insufficient qualifications have lower chances of finding work and are at greater risk of remaining unemployed. The Committee expressed in its 2010 observation its appreciation of the efforts in implementing under the Employment Service Convention, 1948 (No. 88), measures to achieve the best possible organization of the employment market through the public employment service in an extremely difficult period. ***The Committee looks forward to receiving from the Government, in its next report on Convention No. 122, an assessment of the impact of its active labour market measures, in particular the actions taken to secure the supply of skilled labour and to monitor the labour market. It also invites the Government to provide information on the consultations held on the matters covered by the Convention with the social partners, including details of their contribution in the implementation of an active employment policy.***

*Long-term unemployment.* The Government indicates that to combat long-term unemployment, people have to be given consistent, timely support. Support that is tailor-made to suit the individuals concerned allows them to rapidly find employment at living wages on the regular job market. The Committee notes that a draft law for improving the chances of integration into the labour market was passed in May 2011. Job centres with partners of the regional networks will be more involved in developing and targeting implementation of their own instruments to assist the long-term unemployed to find work. ***The Committee invites the Government to include in its next report information on the results achieved in terms of ensuring job opportunities for the long-term unemployed.***

*Youth unemployment.* The Committee notes that in May 2011 some 258,000 young people between 15 and 25 years of age were unemployed (-15.6 per cent compared with May 2010). The decline in youth unemployment compared with 2010 was more pronounced in western parts than in eastern parts of Germany. The Government indicates that, among other initiatives, a new proactive approach to improving job market opportunities for young people is initially tested in 20 regions for optimizing collaboration among the social security centres, the public employment offices and the youth welfare offices. The national pact for the training of a new generation of skilled workers was extended in October 2010 until 2014 including representatives of the Ministers of Education and Cultural Affairs as well as the federal authority responsible for integration. ***The Committee invites the Government to include detailed information in its next report on the results obtained in terms of ensuring lasting employment for young persons who enter the labour market, as well as on the efforts made to provide appropriate skills to young persons within the implementation of the programmes adopted.***

## Greece

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1984)**

*Articles 1 and 2 of the Convention. Employment policy measures implemented under the adjustment programme.* The Committee notes the Government's report received in February 2012 for the period ending in May 2011, and an additional report received in August 2012 in reply to the 2011 observation. The Government indicates in the report received in February 2012 that the current short-term decline in economic activity and the rise of unemployment are

unavoidable consequences resulting from the adjustment of investment and consumer expectations as well as from the frontload and rapid fiscal consolidation, which is nevertheless necessary in order for the public debt to become manageable and for the country's growth potential to be improved. The Government indicates that the National Reform Programme 2011–14 was prepared by following the ten guidelines included in the Joint Employment Report. In the context of the programme, under the Europe 2020 Strategy, the Government has set 70 per cent as the national target for overall employment at national level in 2020 and pointed out specific bottlenecks in the labour market. The Committee notes that challenges include bottlenecks in entering, re-entering and staying in the labour market for specific groups, such as women, young persons and older workers; the need to reinforce the central role of the Public Employment Service (PES), as well as to establish and activate decentralized intermediate structures in policy implementation; skills mismatch; and undeclared work. The Government indicates that the uncontested fact is that the obligations arising from the Memorandum of Understanding (May 2010) and its successive supplements restrict and define the framework of implementation of the national employment policy. The Committee notes the information provided by the labour inspectorate for the first five months of 2011, which points out a decrease of 27.67 per cent in full-time employment contracts and a rise of 11 per cent in rotation employment. The Government indicates that it is evident that more and more full-time employment contracts are being converted into part-time or rotation work contracts. In reply to the 2011 observation, the Government indicates in the report received in August 2012 that in the last two years, given the adverse economic conditions, a series of legislative interventions have taken place, within the framework of the Memorandum of Understanding and the relevant adjustment programmes of the country, with the aim of improving the functioning of the labour market. Moreover, the Government reports that measures are being promoted in order to improve access to basic social services, along with the effective reorganization of labour market institutions, with a view to mitigating the social impact from the crisis. Since the beginning of 2010 up to and including May 2012, more than 905,000 persons, as workers, self-employed freelancers or trainees, have joined 57 specific programmes of the Employment and Labour Organization (OAED) with a total budget of €3.5 billion relating to job retention, promotion of employment and vocational training. The Government estimates that on completion of such programmes, the beneficiaries will exceed 1.1 million persons. It also estimates that, due to these actions, the growth rate in unemployment has been reduced by 5 per cent in the 2010–11 period. The Committee notes the statistics published by the Hellenic Statistical Authority (ELSTAT) indicating that the unemployment rate in July 2012 was 25.1 per cent compared to 17.8 per cent in July 2011. The number of employed persons amounted to 3,763,142, the number of unemployed persons amounted to 1,261,604, and the number of inactive persons reached 3,356,276. Employed persons decreased by 329,086 and unemployed persons increased by 377,991 when compared with July 2011. The Committee notes from these statistics the staggeringly high youth unemployment rate with the 15–24 age group reaching 54.2 per cent unemployment in July 2012. ***Taking into account that the next report on the Convention is due in 2013, the Committee invites the Government to further specify how, pursuant to Article 2 of the Convention, it keeps under review the measures and policies adopted according to the results achieved in pursuit of the objectives of full, productive and freely chosen employment, specified in Article 1. It recalls that, in the terms of that Article, an active employment policy should be pursued “as a major goal”, which may be complemented by other measures to attenuate the consequences of unemployment. It also invites the Government to include in its next report information on the results of the measures adopted in order to overcome the impact of the debt crisis on the labour market, and information on the number of programme beneficiaries obtaining lasting employment.***

***Promotion of small and medium-sized enterprises (SMEs).*** The Committee notes the information on the measures to promote SMEs. These measures include a programme to support micro-, small and medium-sized enterprises in the manufacturing sector; a youth entrepreneurship and female entrepreneurship programme aiming at offering start-up support on entrepreneurial activities and creating new jobs; a clothing and footwear programme; and the new innovative entrepreneurship programme which aims at enhancing the creation of new businesses. In addition, the Government indicates that the Hellenic Fund for Entrepreneurship and Development has been established by virtue of Act No. 3912/2011 in order to improve the business climate and grant loans under favourable terms to finance investment projects. ***The Committee asks the Government to continue to provide information on the impact of the measures taken to improve the business environment in order to promote the development of SMEs and create employment opportunities for the unemployed.***

***Modernization of labour market institutions.*** The Committee noted in its previous observation that the Government had underscored the need to give priority to the modernization of labour market institutions. ***The Committee once again refers to its observation on the Employment Service Convention, 1948 (No. 88), and invites the Government to provide in its next report on Convention No. 122 further information on the effectiveness of the reorganization of its labour market institutions.***

***Vulnerable categories of workers.*** The Government states in the report received in August 2012 that policies to contain unemployment and enhance employment are top priority, especially for the vulnerable population groups that are dropped out of the labour market or are at risk of poverty and social exclusion. To this end, the Ministry of Labour is taking measures to mitigate the adverse effects of the crisis and to support the employment of the most vulnerable workers. Employment support programmes are aimed at workers and unemployed persons, focusing on population groups most affected by unemployment, such as young persons and vulnerable groups that face great difficulties in entering the labour market. Furthermore, a concerted effort is made to use the available resources and adapt programme planning to the

Greek reality. With respect to young persons, the Government indicates that an employers' subsidy programme is being implemented by the OAED, according to which the insurance contributions for pension, health-care services and occupational hazards of young persons aged 16–24 are fully subsidized by the OAED. Young unemployed people are also benefiting from programmes targeted at all unemployed persons. Some of these programmes provide special priority for young persons. Moreover, in order to facilitate youth transition into the labour market and address high unemployment rates for this age group, targeted active employment policies as well as programmes supporting youth entrepreneurship are planned and/or implemented, aiming at facilitating the integration of the youth into the labour market by enhancing their skills and acquiring work experience. To this end, the following programmes are being implemented: subsidy programmes for the acquisition of work experience for enterprises with the aim of recruiting unemployed graduates of universities and technological institutes (up to 35 years old), community service programmes in the sector of culture for young people, as well as training programmes for the youth, with the use of training vouchers so that they can acquire work experience either generally or targeted in industries. ***The Committee invites the Government to continue to provide information on the impact of the measures taken to ensure lasting employment for young persons and other vulnerable categories of workers.***

*Education and training policies.* The Committee notes the information provided by the Government in the report received in August 2012 indicating that vocational training was provided to 374,798 workers through 16 programmes of the Fund for Employment and Vocational Training (LAEK) and programmes of structural adjustment. With respect to young people, 26,664 students attended vocational training programmes in 51 apprenticeship schools, 31 Vocational Training Institutes (IEK), as well as two model units for persons with disabilities. Furthermore, the Government provides information on actions taken by the Ministry of Labour, such as training programmes for unemployed persons on basic skills (computers and communications) with a view to combating unemployment and improving the professional skills of the workforce in sectors strongly affected by the economic crisis. ***The Committee once again invites the Government to include in its next report information on progress made to activate the National System for Linking Vocational Education and Training with Employment (ESSEEKA).***

*Article 3. Participation of the social partners.* The Government reiterates that the social partners participate in the OAED's Board of Directors, which decides on the preparation and implementation of the programmes designed and implemented by the OAED. It adds that the social partners also participate in the Council for Lifelong Learning and Employment. ***The Committee invites the Government to indicate in its next report the manner in which account is taken of the opinions and experiences of the representatives of employers' and workers' organizations in the formulation and implementation of the labour market measures included in the adjustment programme.***

## Guatemala

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1988)***

*Articles 1 and 2 of the Convention. Coordination of employment policy and poverty reduction.* In reply to the comments made in the 2010 observation, the Government provides information in the report received in September 2011 on the results of the National Emergency and Economic Recovery Programme (PNERE). The Committee notes that the objectives and aims of the employment policy of the PNERE facilitated the creation of jobs through investment to finance the construction of productive and social infrastructure, the granting of loans to small and medium-sized enterprises and the creation of jobs in the education, health and public sectors. The Government adds that the stimulus provided for public works in the fields of physical and social infrastructure made it possible to reduce the impact of the recession. Over 4,500 million Guatemalan quetzal (GTQ) were invested in the construction of road infrastructure, as well as a first down payment of GTQ332 million for the construction of the Northern Transversal Highway. In the field of education, around 2,000 classrooms, 800 sanitary services and 86 new school centres were equipped. ***The Committee invites the Government to provide updated information in its next report so that it can examine the manner in which the new employment objectives set out in government programmes have been achieved.***

*Article 2. Labour market information.* The Committee notes that the data from the employment and income survey of 2010 are the first formal and official employment data for the country that have been available since the previous survey in 2004. The economically active population has risen by 16.3 per cent in relation to 2004 (and now numbers 5,769,262 persons). Around 202,876 persons are unemployed (3.52 per cent of the economically active population), while over 3,400,000 persons are underemployed or in the informal economy. The Committee observes that almost 60 per cent of the economically active population are without statutory benefits. The Government acknowledges that underemployment is becoming one of the most serious and complex problems confronting the country. Its seriousness lies in the magnitude and persistence of a phenomenon with devastating social consequences. ***The Committee invites the Government to provide in its next report updated information on the situation, level and trends of the labour market showing the impact of the measures adopted to promote employment for the most vulnerable sectors (women, youth, workers in the rural sector and the informal economy). The Committee requests the Government to provide updated information in the report on the size and distribution of the labour force, and the nature and extent of unemployment and underemployment.***

*Impact of trade policy in meeting the demand for jobs.* In reply to its previous comments, the Government indicates that, despite the fact that Guatemala is a medium- to low-income country, its education system and the lack of social protection mechanisms are similar to low-income countries. The Government recognizes that the country will reap the benefits of access to the world market if human development strategies are included as an integral part of its growth and competitiveness strategy. The structure of exports was changing over the past decade (exports of manufactured products increased, services grew and agricultural exports decreased). The Government expresses concern that exports are dominated by agricultural and unsophisticated manufactured products, which generates low-quality jobs. ***The Committee invites the Government to continue to provide information on the impact of trade agreements on the generation of productive employment.***

*Article 3. Participation of the social partners.* The Government indicates that an executive board composed of ministerial representatives was set up for the implementation of the PNERE. The crisis committee included representatives of the private sector, cooperatives and civil society. The Committee considers that greater participation by the social partners would make it possible to achieve better results in terms of employment and to overcome the persistent labour market difficulties. ***The Committee invites the Government to provide detailed information on the efforts made to hold the consultations with the social partners required by the Convention, which are intended for the design and implementation of an active employment policy. In this respect, the Committee emphasizes the importance of taking into account the views and securing the support of the social partners in order to ensure that the programmes implemented generate high-quality employment. The Committee reiterates its request for the inclusion of information on the consultations held with all the sectors concerned, including representatives of the rural sector and the informal economy.***

*Coordination of education and training policy with employment opportunities.* In reply to its previous comments, the Government recalls the role played by the social partners on the governing board of the Technical Institute for Training and Productivity (INTECAP), in which plans and programmes are defined for the provision of vocational training and technical assistance for enterprises to improve national productivity. The Government refers to various initiatives adopted by the authorities and indicates that the illiteracy rate has fallen to 18.46 per cent (in 2005 the adult illiteracy rate was around 26 per cent). ***The Committee invites the Government to continue to provide information on the impact of INTECAP plans and programmes, as well as those implemented by the Ministry of Education and the National Employment System to ensure that each person who has acquired training can find suitable employment and endowments in such employment (Article 1(2)(c)).***

## Guinea

### **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 Government's report received in July 2012. The Government indicates that employment is at the heart of the socio-economic development process and in 2007 it incorporated this dimension into the second poverty reduction strategy paper (PRSP). In this context, the Government undertook to create better conditions for the effective implementation of programmes and projects to achieve full employment for all. To this end, the Ministry of Youth and Youth Employment and the Ministry of Employment, Technical Education and Vocational Training were established. The Government indicates various measures in its report intended to promote youth employment and women's employment, including the formulation of the National Support Programme for Youth Employment (2007), the setting up of the National Fund for the Integration of Young People (FONIJ), the establishment of two support funds (30 billion Guinean francs for young people and 100 billion Guinean francs for women) for employment promotion and poverty reduction and the implementation, in partnership with the World Food Programme, of the "food for apprentices" programme for 1,000 disadvantaged young persons (2010). It also refers to the measures to improve the provision of vocational and technical training, including the establishment of a programme for the rehabilitation and equipment of vocational and technical training centres and the training of young persons in labour-intensive techniques by the Guinean Agency for Work in the Public Interest (AGETIP). The Government indicates that the plan of action for the implementation of the national employment promotion policy in Guinea of December 2003 has not yet been put into effect because of the social unrest experienced by the country since that time. The Committee further notes that, according to the PRSP 2011–12, the unemployment rate increased from 10.2 per cent to 15 per cent in Conakry and fell from 6.7 per cent to 3.2 per cent in the other cities between 2002 and 2007. Overall, underemployment affected 9.1 per cent of the active population in 2007 compared with 11.8 per cent in 2002. Women are worse affected by underemployment than men (7.5 per cent for men and 10.5 per cent for women). The proportion of the active population which is underemployed is higher in rural areas (11.1 per cent) than in urban areas (5.4 per cent). ***The Committee invites the Government to provide information in its next report on the results achieved, particularly for young persons and women, by the measures for employment promotion and for better provision of vocational and technical training. It also invites the Government to provide information on progress made on putting into effect the plan of action for the implementation of the national employment promotion policy.***

*Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government indicates that it includes the social partners in all stages of conception, formulation and implementation of employment policies. ***The Committee invites the Government to provide detailed information in its next report on consultation of the social partners in the process of formulation and implementation of employment policies.***

*ILO technical assistance.* The Committee notes the request for technical assistance relating to implementation of the national employment policy made by the Government in its report. In view of the difficulties faced by the Government in recent years in meeting its obligation to submit reports on the application of the Convention, the Committee notes that the preparation of a detailed report containing the information required in the present observation and by the report form will certainly give the Government and the social partners the opportunity to evaluate the effectiveness of the employment policy in achieving the objectives of full and productive employment which are set out in the Convention. ***The Committee considers that technical assistance from the competent units of the ILO might be useful to help the Government with bridging the gaps in the implementation of an active employment policy in accordance with the Convention.***

### **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 must therefore repeat its previous observation which read as follows:

*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 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 National Orthopaedic Centre 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.***

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

## **Hungary**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

*Articles 1 and 2 of the Convention.* *Employment policy measures implemented under the adjustment programme.* The Committee notes the detailed report provided by the Government which sets out and defines several of its employment programmes during the reporting period ending in May 2011. Following the global economic crisis in 2008–09, the Hungarian national economy experienced severe difficulties, including limited access to market financing. To this end, the Government requested assistance from the European Union (EU) and the International Monetary Fund (IMF). To encourage and support economic recovery, the Government has been expected to meet headline fiscal targets. In this regard, the Committee notes that, in March 2011, the Government announced a Structural Reform Programme (Széll Kálmán Plan) to align with the long-term objectives of the Europe 2020 Strategy, which is set out in a two-part package: the 2011–15 Convergence Programme and the April 2011 National Reform Programme. In this regard, the Committee notes that restructuring the labour market benefits in accordance with the structural reform programme has been identified as a main objective of the Government's 2012 budget. The Committee further notes the information provided by the Government that its negative trend of decreasing employment halted in 2010, when the employment rate remained at 55.4 per cent; however, this rate remains one of the lowest employment rates in the EU. The unemployment rate increased from 9.7 per cent in the first three months of 2009, to 11.2 per cent in 2010, to 10.9 per cent in 2011, and 10.5 per cent in 2012. The Government indicates that its economy is expected to continue developing slower than its neighbouring countries. The Committee further notes that the employment rate for persons aged 20–64 years was 60.6 per cent and was anticipated to increase to 61.1 per cent in 2011 and to 62.4 or 62.6 per cent in 2012, and that this low rate of employment has been attributed to loose labour market conditions affecting persons entering the labour market under the

age of 25 or those above the age of 45 with lower levels of education. The Committee notes that, according to the National Reform Programme, the national economy may accelerate to a growth rate of 4–6 per cent from 2013, and the number of those employed may increase by 400,000 by 2015, owing to the indirect impact of structural reforms and improvements in competitiveness. ***The Committee invites the Government to provide information in its report due in 2013 on how measures taken by the adjustment programme, including the National Reform Programme and Convergence Programme, are coordinated so as to effectively translate into productive employment creation.***

***Implementation of active labour market measures.*** The Committee notes the measures and programmes outlined by the Government, including three programmes, “Job security”, “Road to work” and “New perspectives”, to provide job security and creation. The Government further reports on measures undertaken in 2010 to promote the gradual improvement of corporate profitability and the creation of new employment. ***The Committee invites the Government to provide in its next report information on the effects of these measures on the labour market.***

***Equitable regional development.*** The Committee notes that the National Reform Programme aims to achieve balanced and sustainable regional development, and that, pursuant to this programme, the Government places priority on national targets that aim to help regional convergence by incorporating regional considerations in its implementation of individual measures. The Government indicates in its report that, until April 2011, the total contracted amount of support reached 40,235,000,000 Hungarian forints in the framework of the application schemes announced for the most disadvantaged subregions. ***The Committee invites the Government to include in its next report information on the impact of the regional development policies adopted to generate employment in the low-income areas.***

***The Roma minority.*** The Committee notes that, on 20 May 2011, the Government concluded a framework agreement with the National Roma Self Government (ORÖ) in order to facilitate the achievement of the goals set out in the Convention. The Committee notes that, pursuant to the framework agreement, special emphasis is placed on job creation and cooperation in the field of education, and that a key priority is to replace abuse of power and discrimination with serving of the public interest, including the Roma community. To this end, the Committee notes Government Decree 1136/2011 and its accompanying action plan, which aim to: (i) involve 100,000 unemployed Roma persons in the labour market; (ii) implement a comprehensive educational reform; (iii) provide competitive vocational training for around 50,000 adult Roma persons with no higher than apprenticeship education and 80,000 additional adult Roma persons in basic skills training; and (iv) involve 150,000 Roma persons in organized permanent medical consultation. ***The Committee asks the Government to report in detail on the impact of the action taken within the framework agreement and measures to increase active employment policies and social cohesion of the Roma minority.***

***Youth employment.*** The Committee notes that the unemployment rate of young persons rose from 20 per cent in 2008 to 27 per cent in 2009, but then declined to 24.3 per cent in 2011, i.e. about 5 per cent above the EU average. The Government states that this high rate of unemployment is attributable to the low level of education, lack of work experience, and location in which they are seeking employment. The Committee further notes, in this respect, the measures set out in the Convergence Programme, including the development of a higher education and quota system that better conforms to the needs of the labour market. Pursuant to the National Reform Programme, in order to improve the chances of school drop-outs on the labour market, the Government introduced the early start of vocational training at grade 9, which will be mandatory from the 2012–13 school year and will make possible that, after finishing grade 8 of elementary school, pupils can directly enter a vocational training course. The Government further reports the introduction and development of a dual training system, which it states will be more responsive to the needs of the economy. ***The Committee invites the Government to include in its next report information on the progress of the development and implementation of the above measures, as well as the results of its new training system, to ensure that the skills acquired meet the demands of the labour market.***

***Other vulnerable categories of workers.*** Pursuant to the measures set out in the National Reform Programme, in order to increase the employment of persons with disabilities, the Government will support the organizations that employ these workers in order to stimulate their return to the labour market. In addition, new programmes launched in 2011 aim to train adults with disadvantages, and provide an opportunity for obtaining basic education. The National Reform Programme indicates that a programme will be started which aims to improve prioritized key competencies, such as foreign languages and information technology, and promote lifelong learning to enhance the adaptability of the adult population. ***The Committee invites the Government to supply information on these new measures and programmes to promote employment for vulnerable categories of workers, such as persons with disabilities, women and older workers, and on the results achieved in terms of introducing these workers in lasting and productive employment.***

***Article 3. Participation of the social partners in employment policy formulation and implementation.*** The Committee notes that, following the adoption in December 2011 of the Labour Code, the National Economic and Social Council (NGTT) has replaced the tripartite National Conciliation Council (OÉT). The Committee understands that the new provisions may alter the previous participation of the social partners. ***The Committee invites the Government to submit updated information on the manner in which it is ensured that consultations will take place with representatives of employers and workers concerning employment policies, with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies, as laid out in the Convention.***

## Iceland

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1990)**

*Articles 1 and 2 of the Convention. Employment trends and active labour market measures.* The Committee notes the information provided by the Government in a report prepared with the Icelandic Tripartite ILO Committee and received in August 2012. The Government reports that unemployment has fallen from its peak level in 2009. In June 2009, unemployment reached 8.1 per cent, falling to 7.6 per cent in June 2010, and 6.7 per cent in June 2011. Unemployment is greater among young persons (aged 16 to 24) than among older persons (aged 60 and over). According to the labour market surveys by Statistics Iceland, 16 per cent of young people were unemployed in 2009 and 16.2 per cent in 2010. The Government indicates that its main tasks in the employment sphere are to cut unemployment by deliberate means, to eradicate long-term unemployment and to create a more solid foundation for the Icelandic business sector in the future. It also indicates that it is committed to promoting the formulation of a comprehensive employment policy for Iceland, based on equality of status between the occupational sectors, gender equality, healthy commercial practice and “green” economic development in accordance with the principles of sustainable development. This policy is to be implemented by means of consultation between central and local government, the social partners and the academic community. The Government further indicates that a broad campaign to generate employment will include measures aimed at enabling companies to take on people who are registered as unemployed in temporary positions with the support of the Unemployment Insurance Fund, improving the business environment for start-ups and innovative companies by adjustments to the tax legislation, prioritizing state-funded projects that call for large manpower input, and creating job opportunities for young persons. With respect to young persons, a total of ISK250 million was allocated by the Unemployment Insurance Fund in 2010 to create summer jobs for students in a campaign called “856 New Jobs”. The same approach was used in 2011 with a campaign to increase the number of jobs available in state and municipal bodies for students and other jobseekers. The Committee notes that the Government intends to initiate wide-range consultation under the leadership of the Office of the Prime Minister on regional development projects aimed at building up employment and future quality of life. Collaboration with the social partners is to be sought on active labour market measures to combat unemployment. ***The Committee invites the Government to provide information in its next report on the impact of the measures taken to generate employment through the implementation of an active employment policy. It also invites the Government to include in its next report further information on the employment measures implemented at the regional level in cooperation with the social partners (Article 3).***

*Youth employment.* The Government reports that in autumn 2009, the Minister of Social Affairs and Social Security appointed a task force to examine the remedies available and educational options open to people who had lost their jobs, and to propose improvements. Extensive data was gathered on the circumstances of the unemployed, and when this was analysed, priority was given to establishing the position of young people as unemployment is highest in the under-30 age group. The Government indicates that the main aim in combating the negative effects of unemployment among young people was to reduce the number of persons who were inactive while receiving unemployment benefits. Further measures were seen as necessary to activate this group and enable continuing education centres, upper-secondary schools and foundation course departments to admit these individuals. It was proposed that attention be given to expanding the range of vocational training courses and increasing the number of courses designed to keep people involved in social activities. ***The Committee invites the Government to continue to provide information on the measures taken to combat youth unemployment.***

*Education and training policies.* The Government reports that as of 2011 the Business Sector’s Educational Centre has administered the Educational Fund. Previously, grants for vocational training in the business sector were made by the Vocational Education Council. The role of the Educational Fund is to encourage the provision of suitable educational opportunities for persons with little formal education. The Committee notes that, as a further measure, the Government plans to set up the Workplace Study Fund. In this regard, the Government has decided to earmark ISK450 million for workplace study schemes in 2012–14. Furthermore, the programme “Study is a Viable Way” is based on proposals from a consultative group appointed by the Prime Minister and representing government ministries, all the parties represented in Parliament, the social partners and students’ movement. The financing for the programme was secured by agreement between the Government and the social partners in connection with collective wage agreements. The Committee notes that the programme aims to reduce the proportion of people aged 20–66 who have not completed upper-secondary education from 30 per cent to 10 per cent by 2020. ***The Committee invites the Government to provide information on the impact of the measures taken in the area of education and training policies and on their relation to the obtainment of productive employment for the beneficiaries of these measures.***

*Business development.* The Government indicates that a collaborative programme, Entrepreneurial Enterprise, which is administered by the Directorate of Labour and Innovation Centre Iceland, aims at creating jobs for young people by supplying training and guidance to enable them to put their own entrepreneurial ideas into practice. With respect to business development and women, the Committee notes that the Women’s Credit Guarantee Fund was restored in March 2011. Its role is to support women to take part in employment and innovation by granting security for loans they obtain. The Fund’s priorities are to support women who own and operate small enterprises, to strive to increase the number of women owning and operating enterprise, to augment women’s access to capital for the purpose of running a business, to



generate employment and encourage innovation in the business sector, and to encourage marginal groups of women (immigrants) to participate in business ventures. *The Committee invites the Government to continue to provide information on the impact of business development measures on employment creation and decent work.*

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1990)**

*Promotion of employment for persons with disabilities.* The Committee notes the information provided by the Government in a report prepared in consultation with the Icelandic Tripartite ILO Committee and received in August 2012. It notes that the report was prepared in response to the request made by the Conference Committee in June 2012. The Committee notes with *interest* that the statement of objectives in the Disabled Persons Act, which took effect on 1 January 2011, defines the aim of the Act as being to guarantee persons with disabilities equality and quality of life comparable with that of other citizens and to create conditions in which they are able to live a normal life. The Government also indicates that the Programme of Action on Disabled Persons' Affairs for 2012–14 defines measures aimed at making workplaces accessible, supporting persons with disabilities in the private sector and making the labour market more accessible to them. The aim is that 85 per cent of persons with disabilities of working age should be employed, or be involved in measures to increase their involvement, or in programmes of studies, by the end of 2014. The Committee notes with *interest* the adoption on 12 June 2012 of Act No. 60/2012 on Employment-Related Vocational Rehabilitation and the Operation of Vocational Rehabilitation Funds. The Government indicates that the aim of the Act is to ensure that individuals with reduced working capacity following illness or accidents will have access to vocational rehabilitation as one part of a comprehensive rehabilitation programme in which vocational rehabilitation funds and institutions operated by central and local government collaborate as far as possible and strive to define and fulfil their roles with the aim that as many people as possible are enabled to remain active in the labour market. The origins of the Act go back to the collective agreements of 2008 between the social partners, and the Vocational Rehabilitation Fund (VIRK) was established to give effect to the collective agreements, as noted in the 2010 observation. *The Committee would welcome continuing to receive information on the measures adopted to promote employment opportunities for persons with disabilities. Please also include practical information, including statistics (disaggregated as much as possible by age, gender and the nature of the disability), extracts from reports, studies or inquiries on the matters covered by the Convention (Part V of the report form).*

## **India**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1998)**

*Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy.* The Committee notes the detailed information and statistics provided by the Government in a report received in August 2012 in response to the request made by the Conference Committee in June 2012. The Government indicates that, from 2004–05 to 2010–11, the Indian economy has enjoyed an unprecedented 8.5 per cent growth, despite the fact that this was a period that saw a severe global financial and economic crisis. The crisis slowed down the growth rate to 6.8 per cent in 2008–09, but the economy rebounded with a robust growth rate of 8.6 per cent in 2010–11. This was composed of 5.4 per cent growth in agriculture, 8.1 per cent in industry and 9.6 per cent in services. The performance in agriculture has been particularly satisfying, with farmers producing more than 235 million tonnes of food grains. The Government indicates that India weathered the 2008 global crisis well by using the available fiscal space for inclusive growth through higher spending for employment generation and poverty alleviation programmes. Unlike other developed countries where the measures to counter job losses were ad hoc and contained elements of protectionism, in the Indian case, the programmes for employment generation were planned with a long-term outlook free of any elements of protectionism. Employment generation programmes like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) have been instrumental in creating employment opportunities and placing additional income in the hands of the poor and disadvantaged sections of society. The Government also states that it is working to develop the knowledge, skills and attitudes of stakeholders involved in rural development so as to introduce them to the newest concepts, techniques and information to enable them to act as catalysts for qualitative development. *The Committee invites the Government to indicate in its next report to which extent measures implemented under the Five-Year Plan 2007–12 have managed to improve the quality of the employment generated and alleviate both unemployment and underemployment. Please also provide information on the efforts made to improve the employment situation for young persons and workers in the unorganized sector and the results achieved in terms of designing targeted programmes and incentives for the promotion of sustainable job creation for the youth and for those working in the informal economy.*

*Labour market trends.* The Government reports that underemployment in various segments of the labour force is quite high. During 2009–10, the proportion of usually employed women who were found not to be employed during the week preceding the date of the survey was 15 per cent in rural India and nearly 6 per cent in urban India. The Committee notes from the 44th Session of the Indian Labour Conference held in February 2012 that the female labour force participation rates in the country are low and have remained more or less constant over the past decades. The Government further reports that employment estimated on a usual basis has increased from 459.1 million in 2004–05 to 465.48 million in 2009–10, which shows an increase of about 6.4 million people able to find employment during that period. The number

of young jobseekers in the 15–29 age group, not all of whom may necessarily be unemployed, registered with employment exchanges was 270 million on 31 December 2008. The Committee notes the information provided by the Government indicating that workers from scheduled castes, scheduled tribes and minorities are predominantly engaged in the labour market as casual workers, self-employed in agriculture, small manufactures and traders. The proportion of regularly employed workers is as low as 6.7 per cent among scheduled tribes and a little over 12 per cent among scheduled castes and minorities. ***The Committee would welcome continuing to receive relevant data on the situation and trends of the labour market 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 persons with disabilities (Article 1(2) and Article 2(a)).***

***Employment generation programmes.*** The Committee notes the detailed information provided by the Government on the different employment generation programmes implemented in order to create employment opportunities for unemployed persons, including young persons and rural workers. During the 11th Five-Year Plan 2007–12, a number of employment-oriented programmes like the MGNREGA have been implemented resulting in employment generation. It further indicates that the employment generation programmes are constantly reviewed and assessed for better performance. In the 2011–12 financial year (up to December 2011), 37.7 million households were provided employment with an average of about 32 days of employment generated per household. The Government reports that the enhanced wage earnings have led to a strengthening of the livelihood resource base of the rural poor in India as 72 per cent of the funds utilized were in the form of wages paid to workers. Furthermore, the Ministry of Rural Development has decided to redesign the ongoing Swarnjayanti Gram Swarojgar Yojana (SGSY) programme into the National Rural Livelihood Mission (NRLM) to make it universal in application, focused in approach, and time bound for poverty eradication by 2014–15. The idea has been conceived as a cornerstone of the national poverty reduction strategy. ***The Committee invites the Government to continue to provide information on the impact of the MGNREGA and other major employment generation programmes in enhancing job growth and sustainable employment for poor workers in the rural sector.***

***Article 3. Consultation with the representatives of the persons affected.*** The Committee notes with ***interest*** the information provided by the Government concerning tripartite consultations. The Government reports that the 44th Session of the Indian Labour Conference included discussions on issues such as the possibilities of enhancing female labour force participation, skills development for young persons, minimum wages, social security, employability and employment. Furthermore, the Government indicates that an Act like the MGNREGA, seeking to empower poor rural communities and transforming traditional hierarchical relationships through its rights-based processes, is bound to encounter a host of challenges. The Ministry of Rural Development has taken various initiatives to address these issues and strengthen the implementation of the MGNREGA through active participation by the social partners. ***The Committee invites the Government to continue to provide examples of questions addressed and decisions reached on employment policy through tripartite bodies. It would also appreciate continuing to receive information on the involvement of the social partners in the implementation of the major employment generation programmes.***

***Part V of the report form. ILO technical assistance.*** The Government indicates that the Decent Work Country Programme – India Document (2007–12) is being implemented in collaboration with the ILO. The National Policy on Skill Development, National Policy on Safety, Health and Environment at Work Place and National Policy on HIV/AIDS and the World of Work were also formulated with inputs and technical expertise from the ILO. ***The Committee invites the Government to continue to provide information on the measures taken as a result of the assistance received from the ILO with respect to the matters covered by the Convention.***

## Ireland

### ***Employment Service Convention, 1948 (No. 88) (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 notes that the Government's last report was provided in October 2005. ***Following the deterioration that took place in the employment situation since 2008, the Committee invites the Government to provide information on the measures adopted by the public employment service to achieve the best possible organization of the employment market and to meet the needs of the economy and the active population (Articles 1 and 3 of the Convention). It also invites the Government to provide relevant information concerning 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 in each region of the country (Part IV of the report form).***

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

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1967)***

***Articles 1 and 2 of the Convention. Employment policy measures implemented under the adjustment measures.*** The Committee notes the information provided by the Government in its report received in August 2012 and the information provided by the Department of Education and Skills. The Committee notes that the previous report was received in 2005, and since then the country has been hard hit by the economic and financial crisis and has experienced a sharp rise in unemployment. It notes that the Irish Government has received financial support from the European Union

and the International Monetary Fund (IMF) in order to address the banking crisis. The Government indicates in its report that around 325,000 jobs have been lost since employment peaked at 2.14 million in the final quarter of 2007, a fall of 15 per cent (real GDP, by comparison, declined by 12.5 per cent from its peak). While both male and female employment has declined, the impact on the former (-20.4 per cent) has been more significant than the latter (-8.4 per cent) given their dominance in the construction sector. The impact on young persons (aged 15–24) has also been substantial, accounting for more than half of the total employment decline. The Committee notes the training and education measures introduced by the Government and notes that in 2011, there were approximately 276,000 training and further education places available for the unemployed to access. It also notes the Eurostat statistical data indicating that unemployment reached 15 per cent in Ireland in August 2012. The Government indicates in its report that it believes that the bottlenecks in the Irish labour market include weak labour market demand, particularly in domestic services; long-term and structural elements of unemployment, with long-term unemployment accounting for 51.5 per cent of total unemployment; access to opportunities for up-skilling and re-skilling; the challenge of targeting cost-effective activation programmes to those most at risk of losing contact with the labour market and drifting into long-term unemployment; developing a more effective and streamlined response to the needs of the unemployed and removing disincentives to participation in training, education and employment opportunities. While many labour market bottlenecks need to be addressed, the Government's key focus remains on employment creation through export growth and improved competitiveness. The Committee notes that initiatives outlined in the National Recovery Plan 2011–14 in relation to activation policies include a rationalization of the National Employment Action Plan towards greater capacity and efficiency; more frequent and intense intervention with priority cohorts; the development of a Profiling and Case Management system in 2011; sanctions in the cases of unemployed persons on the Live Register unreasonably refusing to cooperate with the plan and/or with appropriate training, education and employment interventions; changes to the provision for One Parent Families to alter the passive nature of income maintenance that prevails currently. The Government indicates that it is committed to creating an environment that will create new jobs as well as support existing ones. To further this aim, a Ministerial portfolio has been created with a focus on jobs. In addition, the Government announced its intention to bring forward a Jobs Initiative and committed the Government to adhere to the structural reforms required to accelerate growth, job creation and debt sustainability broadly in line with the provisions of the EU/IMF/ECB programme of financial support for Ireland. In this regard, the Government is committed to reversing the recent cut in the national minimum wage, while offsetting any effect on business costs through a reduction in the amount of pay-related social insurance that employers must pay. ***Taking into account that the next report is due in 2013, the Committee invites the Government to further specify how, pursuant to Article 2 of the Convention, it keeps under review the measures and policies adopted according to the results achieved in pursuit of the objectives of full, productive and freely chosen employment, specified in Article 1. It recalls that, in the terms of that Article, an active employment policy should be pursued "as a major goal". It also invites the Government to include in its next report information on the impact of its active labour market measures adopted in order to address labour market bottlenecks and overcome the negative effects of the adjustment measures.***

*Article 3. Participation of the social partners.* The Committee notes that there is no information in the Government's report concerning the participation of the social partners in the formulation and implementation of employment policies. The Committee recalls that in its concluding remarks of the 2010 General Survey concerning employment instruments, it emphasized that social dialogue is essential in normal times and becomes even more so in times of crisis (General Survey, 2010, paragraph 794). ***It therefore again asks the Government to provide information on consultations held with the social partners, both at the formulation and implementation stages of employment policies.***

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1986)**

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 previous and present comments. ***The Committee invites the Government to provide information on measures adopted to promote employment in favour of persons with disabilities in the context of its national policy and international cooperation. It also invites the Government to provide a report, describing in detail the national policy on vocational rehabilitation and employment for workers with disabilities, including practical data on the achievements in promoting employment opportunities for persons with disabilities in the open labour market, in particular for women workers with disabilities, as required by the Convention (Articles 2 and 3 of the Convention). The report should include detailed information on the efforts to achieve effective equality of treatment between men and women workers with disabilities and other workers (Article 4); the manner in which representative employers' and workers' organizations, as well as representative organizations of and for persons with disabilities are consulted on the implementation of the policy (Article 5); the vocational guidance and training, placement, employment and other related services provided to enable persons with disabilities to secure, retain and advance in employment (Article 7); the services provided for persons with disabilities without financial resources (Article 8); and the measures adopted in practice to ensure the availability of suitably qualified staff in the field of vocational rehabilitation (Article 9). Please also include information on the manner in which the Convention is applied including, for example, statistics, disaggregated by age and sex, extracts from reports, studies and inquiries, concerning the matters covered by the Convention.***

## Italy

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

*Articles 1 and 2 of the Convention. Employment trends.* The Committee notes the replies provided by the Government in December 2011 to the matters raised in its 2010 observation. The Government recalls that its strategy to tackle the effects of the global crisis on the labour market consisted of a mix of initiatives aimed at extending social safety nets and promoting active labour market measures for the re-employment of workers. Measures adopted between 2009 and 2011 focused on further broadening the coverage and extending the duration of income support schemes, providing income support to categories of workers not covered by existing schemes, providing employment subsidies to employers hiring workers benefiting from income support mechanisms and to unemployed workers setting up their own businesses, and enhancing the education and training system. In April 2011, an Agreement was signed between the State and regions which envisaged active labour market measures for the retraining and re-employment of workers. It targeted improving labour market information databases (Excelsior and Cliclavoro websites), expanding the role of inter-professional joint funds and bilateral bodies managed by the social partners in providing training, and narrowing the use of income support schemes. The data of the National Institute for Statistics (ISTAT) showed that economic growth was stagnating (GDP growth was 0.1 per cent and 0.3 per cent, respectively in the first and second semester of 2011), due to weak internal demand and a decrease in export volumes. The unemployment rate reached 8.9 per cent (2,243,000 unemployed persons) in December 2011, more than half being long-term unemployment. The Employment Outlook 2011 of the Organisation for Economic Co-operation and Development (OECD) indicates that the Italian labour market is becoming more segmented, with more mature workers in stable, protected jobs and many young workers in more precarious jobs. In this regard, the Committee recalls that new legislation was adopted regulating the limitation of temporary employment contracts. The Government also reports that, according to trade unions, in many cases derogations allowed by collective agreements pursuant to the new legislation were exceeded, resulting in many workers not benefiting from a stable employment relationship. In 2011, about 67,000 persons employed in the education sector working on a temporary basis were employed under permanent contracts. In October 2011, the Government expressed its intention to review structural fund programmes by focusing on education and employment with the aim of improving the conditions to enhance growth and tackle the regional divide. The Committee refers to its 2011 observation on the application of the Private Employment Agencies Convention, 1997 (No. 181), in which it noted that temporary work agencies were used for replacing workers with permanent employment thus contributing to labour market segmentation; temporary workers, including those employed by temporary work agencies, were the most affected by the crisis. ***The Committee invites the Government to provide in its next report information on the measures adopted to address labour market segmentation and their impact on achieving the objectives of the Convention. It also requests the Government to specify how it keeps under review the policies and measures adopted to achieve the objectives of full, productive and freely chosen employment (Article 2 of the Convention). Please also provide information on the effects of the measures adopted on closing the gap of employment levels between the various regions of the country.***

*Youth employment.* The Government indicates that the Italia 2020 – Action Plan for Youth Employability through Training and Employment (€1.1 billion earmarked), was presented to the social partners in August 2011. The Government also reports on the initiatives undertaken by the Ministry of Youth to promote employment and training for youth through job placement services and a fund for financing training initiatives. The Committee notes that the youth unemployment rate rose from 24 per cent in the second trimester of 2009 to 31 per cent in December 2011, with rates in southern regions double those in northern regions. The Committee also notes that the gap between the youth and adult long-term unemployment rates is extremely large, with young people three times more likely to be unemployed for at least one year compared to adults. ***The Committee invites the Government 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 the programmes adopted.***

*Women and other specific categories of workers.* The Government indicates that the increase in occupation levels registered in the second trimester of 2011 compared to the same trimester of the previous year mainly concerned women, whose employment rate increased by 2.5 percentage points, reaching 46.7 per cent (compared to 67.8 for men). The Government reports on the legislative measures taken in 2010 to strengthen the regulatory framework on non-discrimination between men and women in respect of employment, as well as to encourage work/life balance for women through flexible working time, the strengthening of public childcare services and support to entrepreneurship. The Government indicates that the Welfare to Work Plan, 2009–11 was launched in order to assist vulnerable workers. Targeting 230,000 workers benefiting from income support mechanisms and 25,000 workers not covered by unemployment benefits, this plan relies on individual training plans and economic incentives for enterprises willing to re-employ workers as well as for workers setting-up their own businesses. ***The Committee invites the Government to provide in its next report information on the impact of the Welfare to Work Plan, 2009–11, and other measures designed to encourage and support the employment of women and other specific categories of workers, such as the long-term unemployed.***

*Education and training policies.* The Government recalls that in February 2010 the Government, regions, autonomous provinces and social partners signed an agreement to define guidelines for training. The agreement, which

was renewed for the period 2011–12, enhances the role of social partners and their bilateral bodies in offering education and training matching with labour market needs. The Government indicates that, following the adoption of Legislative Decree No. 167/2011, the apprenticeship system was reformed. This reform enhances the collaboration between the State, regions and the social partners with respect to training, as well as the role of enterprises in providing training. Moreover, training possibilities under the third-level apprenticeship (high-level training) are broadened. ***The Committee invites the Government to provide information on the impact of education and training measures, including the reform of apprenticeship, on the employability of young persons and other categories of vulnerable workers.***

*Cooperatives.* The Government indicates that anti-crisis measures regarding the temporary broadening of income support mechanisms also apply to workers in cooperatives. It further refers to data showing that since 2000 employment levels in cooperatives increased by 37 per cent and continued to grow during the crisis. Women accounted for 59 per cent of the workers in cooperatives and foreign workers for 22 per cent. 90 per cent of workers in cooperatives were hired under regular employment contracts. ***The Committee invites the Government to continue 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 Policy Convention, 1964 (No. 122) (ratification: 1986)**

The Committee notes the Government's report received in October 2011, which includes replies to its 2010 observation. The report also included observations from the Japanese Trade Union Confederation (JTUC–RENGO) and replies to the observations submitted by the Japan Postal Workers' Union (YUSANRO) in October 2010. The Committee further notes the observations made by the National Confederation of Trade Unions (ZENROREN), which were forwarded to the Government in September 2011. It finally notes the supplementary remarks submitted by YUSANRO, which were forwarded to the Government in June 2012.

*Article 3 of the Convention. Participation of the social partners in the formulation of employment policies.* In reply to the Committee's previous comments, the Government indicates that opinions expressed at relevant committees have been reflected in the planning and drafting of employment policies. JTUC–RENGO expresses again its concern that the views and opinions expressed by workers' and employers' representatives were not taken into consideration when discussing the draft bill for supporting jobseekers within the Labour Policy Council. As a result, the discussion at the Labour Policy Council was restricted. JTUC–RENGO emphasizes that consultations with the social partners in decision-making regarding employment policies should be fully respected. The Government indicates that it takes this criticism seriously as the Labour Policy Council found it extremely regrettable. ***The Committee invites the Government to provide examples of how the views of workers' and employers' representatives expressed in the framework of the Labour Policy Council and other councils, have been used concretely in the formulation, review and implementation of employment policies. In this regard, the Committee asks the Government to focus on the consultative procedures that enable it to take the views and experiences of persons affected by employment policy measures fully into account in order to secure their full cooperation in formulating and enlisting support for these measures.***

*Articles 1 and 2. Implementation of an active employment policy.* The Government indicates that the unemployment rates increased between 2007 and 2010 from 3.9 per cent to 5.4 per cent for men and from 3.7 per cent to 4.6 per cent for women. The rates slightly decreased to 5 per cent for men and to 4.2 per cent for women in April 2011 despite the March 2011 Great East Japan earthquake. The Government indicates that in the fiscal year (FY) 2010, the measures aimed at promoting employment launched in 2009, which include the Hometown Employment Reactivation Special Grant and the Emergency Employment Creation Project, continue to be implemented. Active labour market measures implemented focused on, inter alia, reducing the requirements for employment adjustment subsidies to support continued employment. Moreover, measures are being implemented to provide training opportunities to jobseekers who have limited opportunities to find employment. These measures include the review of the job card system in April 2011 and the implementation of a support system for jobseekers in October 2011 under the Jobseekers Support Act. This system aims at subsidizing vocational training of jobseekers. The Government indicates that in response to the earthquake, the project on job creation in priority areas is projected to be expanded for reconstruction of the affected region. The creation of approximately 20,000 jobs is planned, particularly through the abovementioned project. Moreover, the "Japan as One Work Project" has been developed. This entails the creation of employment through construction projects, the expansion of subsidies for enterprises that recruit disaster victims, employment support through on-site job counselling and the broadening of both employment adjustment subsidies and benefits of employment insurance to ensure continued employment and secure daily lives of disaster victims. The Committee notes that the GDP growth was expected to slow down to 0.7 per cent in 2011 before rising to 2.9 per cent in 2012. The recovery is expected to continue in 2012 as the resumption of exports increases domestic demand and reconstruction spending continues. ***The Committee invites the Government to provide information in its next report on the impact of the measures taken to promote full employment within a framework of a coordinated economic and social policy, including data on the employment levels of those who have been affected by the earthquake.***

*Workers affected by the postal privatization.* In its remarks of October 2010, YUSANRO indicated that due to a cutback in personnel costs, the number of non-regular workers of the Japan Post Group had increased by 15,000, while regular workers were reduced by 6,000 over two years after the 2007 postal privatization. In its comments of June 2012, YUSANRO indicates that out of 208,604 fixed-term workers in the Post Group, approximately 121,000 have been employed for more than three years. It further indicates that in February 2010, the Government drafted a Postal Reform Plan, which envisaged improving the working conditions of the high number of non-regular workers in the postal services and recruiting 100,000 full-time employees. Subsequently, the Post Group companies announced a recruitment plan, according to which workers fulfilling requirements concerning the duration of service (at least three years), hours of work (more than 20 hours per week) and age (less than 60 years old) were eligible for taking a test for their promotion to regular workers. The Post Group determined that 65,000 non-regular workers were eligible for the test. However, only some 9,500 workers passed the test in 2010 and 2011. YUSANRO points out that fixed-term workers have performed their job for many years as full-time workers. Therefore, they are experienced and their capability has been tested, but they have not gained employment security. It also indicates that the Japan Post Service company did not implement the promotion of fixed-term workers to regular workers in FY 2011 and postponed it until June 2012. Moreover, in September 2011, the Japan Post Service company terminated the employment of 13,694 fixed-term workers. YUSANRO indicates that a review of the postal privatization should target the equal treatment of non-regular workers and their promotion to full-time regular employees. YUSANRO also indicates that no consultations were held with the social partners concerning employment policies in the postal sector. Therefore, it is necessary to hold consultations between the Government and the employers' and workers' representatives of the postal sector to develop policies for full employment. In its report received in October 2011, the Government indicates that generally speaking it recognizes that it is important that employers give consideration to the conditions of employment of their employees. However, it stresses that the employment of non-regular workers in the Post Group companies, which are private firms, should be determined by their business management. ***The Committee requests the Government to provide in its next report information on the impact that the privatization in the postal sector has had on the labour market. It would also appreciate receiving information on how the contracts used in the postal sector have contributed effectively to productive employment rather than to the redistribution, on less secure conditions, of existing jobs.***

*Non-regular workers.* In its observations of September 2011, ZENROREN indicates that the Government failed to take appropriate measures for correcting the deteriorating situation which non-regular workers, comprising fixed-term workers, part-time workers, contract workers and workers employed by temporary employment agencies, are obliged to accept. Non-regular workers are the first to lose their jobs when the economy takes a downturn. Therefore, non-regular workers are more likely to fall into underemployment and long-term unemployment. A large number of non-regular workers lost their jobs following the March 2011 earthquake. Nevertheless, the situation in which replaceable workers are engaged in the same jobs has been a practice for companies in Japan. Not only wages and working conditions of non-regular workers are unequal to those of regular workers, but also these workers hardly obtain regular employment status and are excluded from social security coverage, especially unemployment benefits. The insufficient system of income support and vocational training in case of termination of employment causes non-regular workers to work in undesirable jobs, thereby restricting their freedom of choice of employment. ZENROREN further indicates that, following the reforms adopted since the late 1990s and the repeated revisions of labour laws, employers are encouraged to employ more non-regular workers. However, no regulations and monitoring system exist to correct adverse effects caused by those changes. In its remarks of June 2012, YUSANRO also expresses its concern that major corporations are replacing more of their full-time employees with casual workers, such as temporary agency workers and independent contractors. Major corporations have cut jobs and limited wage increases allegedly in order to deal with the adverse impact of the earthquake. The Government indicates that equal and balanced treatment for part-time workers has been promoted under the revised Part-Time Workers Law. This legislation prohibits, in principle, business operators to discriminate against part-time workers in terms of wages and other treatments. Subsidies are provided to those businesses that promote an equal treatment for fixed-term and part-time workers. The Labour Policy Council has discussed rules for fixed-term employment contracts. The Committee observes that non-regular workers make up more than one third of total employment. In its General Survey of 2010 concerning employment instruments, the Committee also noted that in Japan there has been increasing labour market dualism arising from a decline in the prevalence of the lifelong employment system (paragraph 576). The Committee recalls its 2010 observation, in which it noted the rising unemployment among non-regular workers following the economic slowdown. ***The Committee requests the Government to provide in its next report detailed information on the measures implemented in consultation with the social partners to reduce labour market dualism and on how these measures have concretely translated into productive and lasting employment opportunities for non-regular workers.***

*Employment of women.* In reply to the Committee's previous comments, the Government indicates that the total number of women employed increased to 23.29 million in 2010 with women's share in the total number of employed at 42.6 per cent. The revised Childcare and Family Care Leave Law, which obliges employers to establish a system providing for short working hours and overtime exemption and to expand the childcare leave system, came into force in June 2010. In FY 2010, the number of consultations regarding the Law doubled compared to the previous year to 143,000. Regarding the career-tracking system, the Government indicates that in order not to make the career-tracking system gender biased, a fixed number of enterprises introducing the career-tracking system are provided systematic guidance by

prefectural labour offices pursuant to the Equal Employment Opportunity Law. *The Committee invites the Government to provide information on the impact of policies and measures taken to promote women's employment and equal employment opportunities for women and men. Please also provide information, including statistics, on the effect that the initiatives taken have had on dismantling the gender-based career-tracking system to ensure that there is freedom of choice of employment and that each worker shall have the fullest possible opportunity to qualify for and use his or her skills, in the conditions set out in Article 1(2)(c) of the Convention.*

*Youth employment.* The Government indicates that it continued to implement measures to promote the employment of new graduates, such as doubling the number of employment service staff providing job support to new graduates, establishing the New Graduate Support Hello Work and providing for subsidies to enterprises hiring young persons within three years after their graduation. The Government further indicates that as a result of the *freeters* Regular Employment Promotion Plan, 304,000 *freeters*, i.e. young people in temporary or part-time jobs, were regularly employed. The Committee notes that the unemployment rate among young persons between 15–24 years increased from 7.7 per cent in January 2011 to 9.5 per cent in April 2011. *The Committee requests the Government to provide information on the impact of the measures implemented in terms of generating productive and lasting employment opportunities for young workers.*

*Older workers.* The Committee notes JTUC–RENGO's observation that as of 1 June 2010, 3.4 per cent of enterprises with 31 or more workers have not yet implemented any employment security measures for the elderly. In JTUC–RENGO's view, government guidance to companies that have not implemented measures for employment of the elderly is not strong enough to enforce the Elderly Employment Stabilization Law. The Government indicates that the entire system regarding elderly employment policies is to be reviewed within the Labour Policy Council in order to, inter alia, strengthen the enforcement of the Elderly Employment Stabilization Law. The Government also indicates that various subsidies are provided to businesses to encourage them to take employment security measures for older workers and provide them with employment opportunities. *The Committee invites the Government to include in its next report data which will allow it to assess the effectiveness of the measures implemented to promote productive employment opportunities for older workers.*

The Liaison Council of Labour Unions in Public Corporations (TOKUSHUHOJIN–ROREN) submitted observations to the Government on the application of the Convention, forwarded in August 2012. *The Committee intends to examine these observations and the comments that the Government may wish to make on the matters raised therein at its next session in 2013.*

### **Private Employment Agencies Convention, 1997 (No. 181) (ratification: 1999)**

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution). Protection ensured by the revision of the Worker Dispatch Law.* The Committee notes that, at its 313th Session (March 2012), the Governing Body adopted on 26 March 2012 the recommendations of the tripartite committee established to examine the representation alleging non-observance by Japan of the Private Employment Agencies Convention, 1997 (No. 181), made under article 24 of the ILO Constitution by the Japan Community Union Federation (document GB.313/INS/12/3). These recommendations entrust the Committee with following up the matters raised in the representation with respect to the application of the Convention. The Committee notes the Government's report received in October 2012, which includes comments formulated by the Japanese Trade Union Confederation (JTUC–RENGO). The report contains replies to the matters raised in the tripartite Committee report. In paragraph 43 of the tripartite Committee report, the Committee expressed its firm hope that the new bill to revise the Worker Dispatch Law would soon be enacted into law in order to ensure "adequate protection" for all workers employed by private employment agencies in accordance with *Articles 1, 5 and 11 of the Convention*. It also referred to the importance of consulting the social partners on the legislative provisions in question. The Committee notes that Act No. 27 of 2012 for Partial Revision of the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers (hereinafter referred to as the "2012 Revised Worker Dispatch Law") was enacted on 28 March 2012 after some amendments were made by the Diet. Those amendments included the removal of the prohibition of registration-type worker dispatching and dispatching to the manufacturing industry. The issue of "registration-type dispatch" was one of the main issues raised by the complainant in the representation.

*Article 5(1). Equality of opportunity and treatment.* In paragraph 38 of tripartite Committee's report, the Government was requested to clarify whether the provisions of *Article 5(1)* of the Convention apply to both the dispatch business operators and the dispatch receiving companies. The Committee notes the information provided by the Government in its 2012 report indicating that section 3 of the Labour Standards Law, which prohibits discriminatory treatment with respect to working conditions of workers, applies to both dispatch business operators and their clients in accordance with section 44 of the Worker Dispatch Law. In addition, dispatch business operators are prohibited from engaging in discriminatory treatment with respect to accepting applications and conducting interviews. The Government was invited to take the necessary action to remove any doubt as to the application to all workers of the provisions of Convention No. 181, including *Article 5(1)* (paragraph 39 of the report). The Government indicates that Japanese laws and regulations impose employment responsibilities on dispatching business operators that are employers in principle, and then identifies the responsible parties by specifying matters on which responsibilities should be imposed on clients by provisions of the Worker Dispatching Law. It adds that various rules are established to avoid lack of protection for

dispatched workers which is caused by the unclear responsibilities of employers. ***The Committee invites the Government to provide further information on the application of Article 5(1) of the Convention in practice. For example, please state whether the authorities responsible for the application of the abovementioned legislation or tribunals have rendered decisions involving this matter which relates to the application of the Convention (Part IV of the report form).***

***Article 11. Measures to ensure adequate protection for workers employed by private employment agencies.*** The Japan Community Union Federation submitted in the representation that the decision rendered by the Supreme Court of Japan in the Iyo Bank case violated *Article 11* of the Convention under which member States are required to ensure adequate protection for employees of temporary work agencies. In paragraph 40 of its report, the tripartite Committee noted the concern expressed by the Government with respect to new problematic forms of dispatch working, such as dispatching on a daily basis without proper management, workers continuously being engaged in dispatch work for a long time as a result of having no alternative options, and cases of dispatching to prohibited businesses. In paragraph 42, the tripartite Committee further noted that the proposed bill to revise the legislation would significantly increase the authorities' power to control illegal dispatches. The Committee notes with *interest* that the 2012 Revised Worker Dispatch Law prohibits day worker dispatching in principle for a term of 30 days or less, obliges dispatching business operators to make efforts in taking measures to promote transition of fixed-term employment of certain dispatched workers to indefinite-term employment, and creates a system in which clients are deemed to have offered employment contracts to the dispatched workers in cases where illegally dispatched workers are accepted by clients that are aware of such illegality. ***Following the adoption of the 2012 Revised Worker Dispatch Law, the Committee invites the Government to provide further information with respect to the impact of these new measures taken to ensure protection for workers in the areas described in Article 11.***

***Other issues following the representation.*** In paragraph 41 of the tripartite Committee's report, it was noted that – unlike the information earlier provided by the Government concerning the amendments to the Worker Dispatch Law that would strengthen the protection afforded to dispatch workers by prohibiting in principle the “registration-type dispatch” and worker dispatching to manufacturing business – the Diet did not retain the proposed amendments in the revised law enacted on 28 March 2012. The Government was invited to take all the necessary measures to bring the legislation and practice in line with *Articles 1, 5 and 11* of the Convention. The Committee notes the information provided by the Government indicating that the 2012 Revised Worker Dispatch Law includes a provision to specify ways to deal with the registration-type worker dispatch and dispatching to the manufacturing industry as matters for study. The JTUC–RENGO indicates that the enactment of the 2012 Revised Worker Dispatch Law has reversed the current towards deregulation that has been the norm since the establishment of the Worker Dispatch Law. Nevertheless, the JTUC–RENGO finds it regrettable that the bill formulated on the basis of proposals put together through discussions in the Labour Policy Council was amended by the Diet. In particular, the deletion of the ban on “registration-type dispatch” and the call to reconsider the nature of this form of dispatch in the Labour Policy Council has resulted in the problem that the issue of registration-type workers, whose employment is precarious and for whom protection regarding the securing working conditions is in reality difficult to carry out, is left unresolved. In addition, issues such as the situation with manufacturing industry dispatching still remain. The JTUC–RENGO further indicates that the Revised Labour Contract Act, enacted on 3 August 2012, includes provisions that are applicable to registration-type dispatch workers and adds that worker protection can be carried out under the revised legislation. ***The Committee invites the Government to provide information with respect to the new legal framework in relation to “registration-type dispatch” and worker dispatching to manufacturing industry. It also invites the Government to provide information on the operation in practice of the 2012 Revised Worker Dispatch Law and the Revised Labour Contract Act with respect to registration-type dispatch workers and workers dispatched to the manufacturing industry.***

***Article 10. Machinery and procedures for the investigation of complaints.*** The Committee noted in its 2009 direct request that 11 complaints were filed with the Ministry for Health, Labour and Welfare in 2007 in respect of the services provided by private employment agencies. Among other things, such complaints pertained to the working conditions and fees. ***The Committee invites the Government to continue reporting on the number and nature of the complaints received in respect of the activities of private employment agencies.***

***Article 13. Cooperation between the public employment service and the private employment agencies.*** The Committee previously noted that provision is made, under the Basic Principles of Employment Policies, for public employment security offices and the private employment agencies to make efforts to improve their proper supply and demand adjustment functions through cooperation between the public and private sectors. ***The Committee invites the Government to provide information on the effectiveness of the cooperation between the public employment service and private employment agencies to improve their supply and demand functions.***

***Article 14. Adequate remedies in case of violations of the Convention.*** The Government indicates that it generally provides correctional guidance in cases of violations of the Worker Dispatch Law, and provided 9,280 instances of written guidance in 2011. ***Following the adoption of the 2012 Revised Worker Dispatch Law, the Committee invites the Government to provide information on the operation in practice of the remedies available in the event of violations of provisions of the Convention, and an evaluation of the adequacy of such remedies together with statistics, disaggregated by gender and sector of the economy, with respect to the source of complaints.***

***[The Government is asked to reply in detail to the present comments in 2014.]***



## Jordan

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes the information provided by the Government in August 2011 in reply to the 2010 observation. The National Agenda (2006-15) and the document “We are all Jordan” of 2007 were combined into a three-year Executive Development Programme (EDP) 2007-09, which was followed by the EDP 2009-12. Promoting employment and training is both a priority and a cross-sectoral issue of the National Agenda and the EDP, to the extent that trade and investment policies, support to new industries and SMEs, and the increase of the private sector competitiveness are expected to stimulate job creation. In November 2010, the Jordan Global Jobs Pact Country Scan Report was prepared in coordination with the ILO and included an overview of the policy responses to the economic and financial crisis, and recommendations on how national policies, including employment policies, can contribute to shaping a fair and sustainable globalization. The Government further reports on labour market developments in line with the National Agenda. The cumulative number of additional jobs created between 2006 and 2009 was faster than that required to achieve the target unemployment rate of 6.3 per cent by 2017. The unemployment rate was reduced from 14.8 per cent in 2005 to 12.9 per cent in 2009 and was expected to be below 10 per cent in 2012. Public sector hiring continued to play an important role in absorbing Jordanian jobseekers. The Government acknowledges that the distribution of development benefits can be improved and investment should be promoted in governorates affected by higher unemployment rates. It also indicates that migrant workers continued to increase in the labour market. The Committee notes the establishment of the National Centre for Employment providing labour market information and job-matching services, as well as active labour market measures to support employment in the private sector, such as through offering incentives to employers for job creation. The Committee further notes that the National Employment Strategy (NES) was endorsed in May 2011. It seeks to address structural employment, calling for policies and programmes to amplify job creation including in the rural areas and governorates, while expanding social protection to all. The Committee also notes that a new Decent Work Country Programme (DWCP) 2012-15 has been launched which builds on the results of the Global Jobs Pact Country Scan and the goals outlined in the National Agenda, the EDP and the NES. Promoting decent work opportunities for all workers and strengthening employment policy coherence are among the DWCP priorities. ***The Committee invites the Government to provide in its next report detailed information on the impact of the National Employment Strategy, within the framework of the economic and social policy objectives of the National Agenda 2006-15 and the Executive Development Programme 2011-13, in terms of the promotion of full, productive and freely chosen employment. It also invites the Government to provide information on the progress achieved in relation to the employment priorities of the DWCP. The Government is also invited to include 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 Employment, Education, Technical and Vocational Training Council has been established in line with the objectives of the National Agenda and is in charge, inter alia, of developing employment and training policies and programmes, and coordinating the relevant bodies. The Council is composed of a fund aimed at supporting employment and training and a Centre for Certification and Quality Control for education and training. The Government further indicates that it has formulated a set of comprehensive vocational programmes aimed at providing trainees with additional skills to increase their employability. The Committee notes that supporting training of Jordanians in the occupations needed by the labour market is one of the objectives of the NES. Moreover, the DWCP 2012-15 seeks to address the mismatch between education supply and labour market demand. ***The Committee invites the Government to provide information on the impact of the measures adopted, including in the context of the DWCP, to enhance the education and training system, and increase the quality and labour market relevance of training courses.***

*Youth employment.* The Committee notes the Government’s information on young graduates participating in diploma and university level courses organized by the Vocational Training Agency in 2009, as well as students enrolled in technical diploma-level courses offered by the Agency in collaboration with Belqaa Applied University/Korean Institute of Technology over a three-year period (2008-11). The Committee notes that unemployment is particularly high among young persons and graduates, being estimated at around 31 per cent at the end of 2011. The DWCP 2012-15 focuses on promoting youth employment through measures such as increasing access of youth to entrepreneurship training opportunities. ***The Committee invites the Government to supply disaggregated data on young persons obtaining lasting employment following their participation in vocational guidance and vocational training programmes. It also requests the Government to provide information on other initiatives taken in consultation with social partners to increase opportunities for young persons, especially young graduates, to find lasting employment.***

*Women’s employment.* The Committee notes that 96 per cent of young graduates attending training programmes organized by the Vocational Training Agency in 2009 were women (317 persons). Training covered areas such as administrative tasks, information technology, hairdressing and traditional crafts. The Government also refers to training programmes for women implemented by the Vocational Training Agency through agreements for training and employment with the private sector, such as in the field of gold shaping, as well as to a new training project to be started in 2011. The Committee recalls that Jordan faces a very low female participation rate, with 14 per cent of women

participating in the labour force. *The Committee requests the Government to provide information on the measures taken to ensure that women may qualify for productive employment opportunities. It also requests the Government to provide information on the impact of the measures taken to facilitate the integration of women into productive employment.*

*Article 3. Participation of the social partners.* The Government indicates that programmes implementing the NES were formulated with the participation of all official partners. The Committee notes that reinforcing social dialogue mechanisms is among the NES priorities. It also notes that capacity development of the social partners and social dialogue platforms are an integral part of the DWCP 2012–15. *The Committee invites the Government to provide in its next report examples of the manner in which the views of the social partners are taken into account in the development, implementation and review of employment policies and programmes. It also requests again the Government to indicate whether consultations have been held with representatives of workers in rural areas and the informal economy.*

## Madagascar

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Implementation of an active employment policy. Involvement of the social partners.* The Committee takes note of the observations of four Malagasy trade union federations belonging to the International Trade Union Confederation (ITUC) (FISEMA, FMM, SEKRIMA and USAM), submitted to the Government in September 2012. The four trade union federations refer to the lack of dialogue before decisions are taken; they cite the abandoning of the Action Plan for Madagascar (MAP), the repeal of the National Employment Policy, the National Employment Support Programme (PNSE) and the Employment Programme implemented with support from the United Nations Development Programme (UNDP); and the adoption of Decree No. 2012-558 dated May 2012 concerning the reorganization of the Malagasy Observatory of Employment. In its 2011 observation, the Committee also noted that the closure of several enterprises had had adverse effects on employment. *In this context, the Committee once again expresses its concern about the effective pursuit of “an active policy designed to promote full, productive and freely chosen employment”, “as a major goal” “within the framework of a co-ordinated economic and social policy” (Articles 1 and 2 of the Convention). It hopes that the Government will be in a position to send information in a report in 2013 that will allow an assessment of how the main axes of the economic policy, in areas such as monetary, budget, trade or regional development policies, contribute “within the framework of a co-ordinated economic and social policy” to the pursuit of the employment objectives laid down in the Convention. The Committee trusts that the Government will provide information on the measures taken to create lasting employment, reduce underemployment (reported to affect some 25 per cent of the active population) and combat poverty, specifying the measures taken to promote employment among the most vulnerable categories (women, young people and rural workers).*

*Coordinating education and training policy with employment policy.* In its last report, the Government indicated that the Decree establishing the Malagasy Employment Promotion Office (OMPE) had been repealed in 2009 and that the employment programmes implemented with support from the UNDP had also been suspended since the onset of the crisis. Furthermore, the 2010 periodic household survey would seem to suggest that the level of education is a discriminating factor in job seeking, with unemployment tending to increase with the number of years of study. *The Committee invites the Government once again to include information in its next report on the action taken to ensure the coordination of education and vocational training policies with employment policies. It also asks the Government to give an account of the results obtained in terms of access for young graduates to lasting employment.*

*Collection and use of employment data.* The Committee understands that work was recently carried out by the Malagasy National Statistics Institute (INSTAT) on employment and the informal sector. *The Committee invites the Government to send in its next report the results of the household surveys conducted by INSTAT. It accordingly invites the Government to give an account of the progress made in obtaining reliable data so as to formulate and implement an employment policy within the meaning of the Convention.*

*Article 3. Participation of the social partners in the formulation and implementation of policies.* The Committee notes that the four trade union federations expressed their concern about the Government’s unilateral conduct. They state that dialogue between the Government and the social partners on employment has almost broken down, as the work of the National Monitoring Committee for the Promotion of Employment and Poverty Reduction has been put on hold. *The Committee again draws attention to the importance of giving full effect to Article 3 of the Convention, particularly in a context of massive and persistent underemployment. It hopes that the next report will contain detailed information on the consultations held with representatives of the social partners on the subjects covered by the Convention. Furthermore, it asks the Government to provide information on the consultations held with the most vulnerable categories of the population, particularly with the representatives of workers in rural areas and the informal economy, in order to obtain their cooperation in the formulation and implementation of employment policy programmes and measures.*

## Mauritania

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

*Employment promotion.* The Committee takes note of a new observation from the General Confederation of Workers of Mauritania (CGTM) forwarded to the Government in September 2012. The CGTM once again deplores the absence of a defined national employment policy. At the public service level, recruitment has become episodic and occurs to fill positions due to retirement. At the private sector level, employment and placement offices have ceased to exist. The CGTM again expressed concern with respect to the actions of multinational companies operating in the mining sector. These companies recruit employees without complying with the minimum standards required of professional qualifications. In its 2011 observation, the Committee had already noted the concern of the CGTM for the State to fulfil its obligation to define and promote employment policy in the country, which would be the best means of combating poverty in the current crisis and also of ensuring the best possible distribution of natural resources. In this regard, the CGTM had noted the systematic recourse to multinational companies, which exploit the principal mining, fishing and agricultural resources of the country without adopting genuine policies to promote employment. Furthermore, according to the CGTM, the multinational companies make use of expatriate staff to fill high-level positions. The CGTM considers that it is incorrect to say that there is a lack of skills among the national workforce. The CGTM also indicates that the major sectors which are the sources of employment, such as agriculture and stock breeding, are seriously dysfunctional. The Committee refers once again to its direct request of 2010 concerning the application of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), where it noted that, in response to a crucial problem of unemployment, the Government established the National Youth Employment Promotion Agency (ANAPEJ) and had once again authorized labour inspectorates to open employment offices. The Committee refers to its 2010 General Survey concerning employment instruments, in which it emphasized that one of the fundamental steps contributing towards the achievement of full employment is to build or strive to build institutions that ensure an efficient public employment service and to regulate the operation of private employment agencies (paragraph 786). ***The Committee invites the Government to provide, in its report due in 2013, information on the measures taken to reinforce the institutions necessary for the achievement of full employment. It hopes that the report will contain precise information on the contribution of existing employment offices in the country towards ensuring the adequate placement of available workers in the labour market. It recalls that assistance is available from the ILO to promote the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.***

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* In its previous comments the Committee noted the “National Employment Strategy and Plan of Action 2008–12”. The Government indicated that the objectives pursued by the National Employment Strategy were geared to those laid down by the Strategic Framework for Poverty Reduction 2006–10 (CSLP 2), namely reducing the unemployment rate to less than 25 per cent and increasing the rate of persons completing technical or vocational training to 55 per cent in 2010. According to the latest estimates, even though the poverty index in 2008 was 42 per cent, compared to 46.7 per cent in 2004, this figure is still far removed from the 25 per cent target fixed for 2015. The National Employment Strategy had enabled the main gaps in employment policy to be identified, namely a very high unemployment rate, a national economy dominated by the informal sector and a mismatch between training and the needs of the national labour market. Issues and structures related to employment would now be grouped together within the Ministry of Employment, Integration and Vocational Training (MEIFP). ***The Committee asks the Government to provide detailed information on the results achieved under the National Employment Strategy in terms of the creation of lasting employment and the reduction of underemployment and poverty. In particular, the Committee would be grateful if the Government would supply information on the steps taken to improve the vocational and technical training available for young persons and women, to promote small and micro-enterprises, and to create productive and lasting employment in conditions which are socially satisfactory for workers in the informal economy.***

*Employment promotion and labour-intensive programmes.* In its National Employment Strategy, the Government indicated that its economic choices had concerned industrial and commercial projects and labour-intensive programmes. The labour-intensive approach (HIMO) aimed at integrating persons with few or no skills in working life had been tried out in numerous programmes, such as the stone masonry programme, the urban development programme and the integrated national programme to support small and micro-enterprises. ***The Committee invites the Government to provide information on the number of jobs created by the labour-intensive programmes and on their impact on the creation of productive employment.***

*Compilation and use of employment data.* The Committee previously noted that the sixth component of the employment strategy underlined the need to establish a national information system on the employment market and a mechanism for technical and vocational training. This system would cover three main areas: (a) creation and operation of the network of producers and users of employment and training data, with the joint involvement of the Ministry of Employment, the National Office for Statistics, sectoral departments and the private sector; (b) monitoring of employment and the technical and vocational training mechanism; and (c) focusing on studies and analysis to improve the system and share information. ***The Committee invites the Government to provide information on the progress made in the***

*compilation of employment data, stating the employment policy measures further adopted thanks to the establishment of a new national employment information system.*

*Article 3. Participation of the social partners in policy formulation and implementation.* The Committee previously noted that, in the context of the National Employment Strategy, two institutional mechanisms would be established, namely an Inter-Ministerial Committee on Employment and a Higher Council for Employment, Training and Labour (CSEFT), chaired by the Ministry of Employment, and that within these two bodies the social partners would be represented. *The Committee invites the Government to supply detailed information on the operation of these two bodies, and also on the participation of the social partners in the implementation of the National Employment Strategy. It also requests the Government to indicate the steps taken or contemplated to involve representatives of persons living in rural areas and those operating in the informal economy in the consultations provided for by the Convention.*

## Panama

### **Employment Service Convention, 1948 (No. 88) (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:

*Reorganization of the employment office network.* The Committee notes the detailed information on activities to modernize the employment service which were undertaken in 2006–09. In a report received in October 2010, the Government refers to the information and documentation sent with regard to the application of the Employment Policy Convention, 1964 (No. 122). In relation to the observation of 2004 concerning Convention No. 88, the Government indicates that the model put forward in August 2006 included the proposal to decentralize the employment offices. The Government reports that, in accordance with *Article 3 of the Convention*, in August 2008 an evaluation was made of the strengths, weaknesses and opportunities relating to the proposal of the public employment service. Difficulties were identified with regard to the area of employment in the regional offices, which should be given greater priority. Plans were also made to strengthen the Directorate-General of Employment in order to have an optimum public employment service that promotes, organizes and facilitates public access to a modern service. *The Committee invites the Government to continue to supply information in its next report on Convention No. 88 on the progress made in ensuring that full effect is given to Article 3 of the Convention. The Committee requests the Government to include up-to-date 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 at national and local levels (Part IV of the report form).*

*Participation of the social partners.* In its observation of 2004, the Committee noted the collaboration between the Ministry of Labour (MITRADEL) and the social partners in relation to certain matters covered by the Convention. The report received in October 2010 does not contain any information on the participation of the social partners to ensure the effective functioning of a free public employment service. The Committee refers to the 2010 General Survey concerning employment instruments, in which it highlighted the importance of the public services' direct and constant interaction with employers and jobseekers (General Survey, paragraph 208). *The Committee requests the Government to provide information on the manner in which the social partners have been involved in the activities of the public employment service. The Committee recalls that, under the provisions of Articles 4 and 5 of the Convention, advisory committees must be set up to ensure the full cooperation of employers' and workers' representatives in the organization and operation of the employment service.*

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

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2011 observation which read as follows:

The Committee notes the detailed information and full documentation provided by the Government in October 2010 in reply to the comments made in 2009.

*Articles 1 and 2 of the Convention. Coordination of employment policy with social and economic policy objectives.* The Committee notes the National Strategic Plan for the period 2010–14, approved in December 2009, which contains a programme for economic growth and social development, accompanied by a financial programming and public investment plan. The National Strategic Plan focuses on four high-priority sectors: high added-value logistical services, tourism, high-margin agriculture and non-traditional financial services. Significant investment is envisaged in public infrastructure projects, such as the construction of the Metro in the city of Panama and the launching of private electricity generation projects. Up to May 2010, the economy had grown by 5.5 per cent under the stimulus of an increase in investment in public infrastructure and the dynamism of sectors such as construction, trade and transport, storage and telecommunications. *The Committee invites the Government to include detailed information in its next report on the impact that the National Strategic Plan 2010–14 is having on the achievement of the objectives of the Convention.*

*Labour market trends.* According to the data published by the ILO in *Panorama Laboral 2010*, the participation rate as of October 2010 was 63.5 per cent, the occupation rate was 59.4 per cent and the unemployment rate was 6.5 per cent. The Committee observes that women's unemployment fell to 8.5 per cent, while men's unemployment rose slightly to 5.3 per cent. The sectors in which there was net job creation in 2009 include, in particular, construction under the effect of hotel and tourism projects, and various public infrastructure works. These projects helped to mitigate the effects of the financial crisis on employment. The Government envisaged the creation of 500,000 new jobs by 2010 and the creation of 500,000 additional jobs, with a view to achieving full employment by the end of 2020. *The Committee invites the Government to continue providing statistical information in its next report on the situation, level and trends of employment, unemployment and underemployment.*

*Panama Canal extension and employment creation.* The Government considers that the Canal Extension Project will generate as many technical and artisanal jobs as professional posts connected with the planning, coordination and implementation of the various phases of the work. It is envisaged that the extension work will lead to the indirect creation of jobs in areas such as

logistics, messaging, purchasing and supplies, financial services, customs procedures, security, housing, transport and food. The National Vocational Training and Human Development Skills Institute (INADEH) has launched training programmes in such areas as information and communication technologies, enterprise management, English, gastronomy, hotels and tourism. The Committee notes that, as of March 2010, a total of 6,274 jobs had been created derived from the Canal Extension Project. The Government envisages a greater impact on employment generation in the medium and long term as a result of the economic growth induced by the additional income generated by the extended canal and the economic activities generated by the increase in cargo and vessels transiting the canal. **The Committee invites the Government to continue providing information on the results that are being achieved in terms of direct and indirect employment creation through the Canal Extension Project and other infrastructure investments.**

*International trade and its labour market impact.* With regard to the impact of the free trade treaties in terms of the improvement of the labour market, the Government indicates that the conclusion of free trade treaties has a positive impact on legal regulations and international cooperation in terms of the exchange of information and support for human resources development. **The Committee invites the Government to provide more specific information in its next report on the impact of trade policy on the demand for employment.**

*Employment promotion and vulnerable categories of workers.* The Government indicates that 14 per cent of the population is in a situation of extreme poverty and that the authorities have formulated a Strategic Social Plan with a view to reducing poverty and social exclusion and creating opportunities for everyone, with particular emphasis on training and social inclusion. The Plan is focused on the provision of high-quality education and vocational training to improve the skills of workers in priority development sectors. **The Committee invites the Government to provide information on the measures adopted to meet the needs of persons who are below the poverty line and to promote the development of income-generating opportunities.**

*Youth employment.* The Government indicates in its report that youth unemployment is an alarming problem which has given rise to much attention in the public sector. The youth unemployment rate was 15.2 per cent in 2009. The Government adds that an analysis is being undertaken of the occupational situation and difficulties encountered by young persons in integrating the labour market. The programme “My First Job”, launched in July 2009, envisages the provision of training to over 20,000 young persons between the ages of 18 and 29 who lack the skills to compete on the labour market, including in the most vulnerable areas of the country. By the end of 2010, some 2,213 young persons who had been unemployed and were without work experience had entered into the labour market. The General Directorate of Employment is implementing the Labour Assistance and Integration Programme (PAIL), which offers grants for periods of up to three months of vocational adaptation in enterprises. As of July 2009, agreements had been concluded with 104 enterprises at the national level to hire 860 persons. **The Committee requests the Government to provide data in its next report on the impact of the measures adopted in improving youth employability and in supporting and promoting the entrepreneurship initiatives of young persons.**

*Coordination of vocational training and employment policies.* The Government indicates that 6 per cent of GDP is invested in education. It recognizes that educational results, over and above quantitative progress in access to education and average schooling (94 per cent of the population have completed primary education) are still not satisfactory, particularly with regard to quality and equality of opportunity. In this respect, the Committee notes a considerable increase in the number of students enrolled in the INADEH, which offered 991 courses during the period between January and May 2010. Total enrolment rose to 21,217 students, of whom 6,576 obtained certificates. Furthermore, collaboration with other institutions at the national level resulted in the creation of new careers and university programmes in critical areas for the implementation of the Canal Extension Project. The number of universities and training institutes increased. The Committee notes that the Strategic Social Plan proposes the establishment of coordination machinery between the INADEH and the Ministry of Labour (MITRADEL) and their institutional strengthening with a view to the development of a system for the identification of demand for vocational training and employment services. **The Committee requests the Government to include information in its next report on the manner in which INADEH and MITRADEL coordinate so as to ensure that education and training policies are in coherence with employment policy.**

*Participation of the social partners.* The Committee notes that the Government is continuing to examine the possibility of reactivating the Tripartite Decent Work Commission. The Committee recalls the essential role played by social dialogue in employment policy and in the promotion of decent work. **The Committee requests the Government to include detailed information in its next report on the progress achieved in the reactivation of the Tripartite Decent Work Commission and reiterates its interest in examining concrete information on the manner in which the social partners participate in the process of designing, formulating, implementing and reviewing employment policies, as required by Article 3 of the Convention.**

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

## Poland

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Employment trends and implementation of an active employment policy.* The Committee notes the Government’s report received in August 2012 containing detailed replies to the points raised in the 2011 observation. It also notes the observations submitted by the Independent Self-Governing Trade Union “Solidarność” which were forwarded to the Government in September 2012. The Government reports that Poland, once the country with the highest unemployment rate in the European Union (EU), has become a country where the unemployment rate in 2009 is about the average for the EU-27. The Government indicates that the National Action Plan for Employment (NAPE) for 2009–11 determined that the main objective is to increase professional activation of Poles during the economic slowdown. It adds that the implementation of the NAPE for 2009–11 has helped mitigate the effects of the economic crisis on the labour market. The unemployment rate for the working age population (15–64 years) increased from 8.3 per cent in 2009 to 9.7 per cent in 2010, 9.8 per cent in 2011, and 9.9 per cent in April 2012. In late May 2012, the number of unemployed persons registered in labour offices reached 2,013,936, an increase of 2.6 per cent over one year. Over several years, the long-term unemployment rate decreased by almost half. In the 2003–06 period, every second unemployed person remained in the records for more than 12 months after registration. At the end of 2009, every fourth registered person remained without work for over a year. In 2010 and 2011, the rate increased to respectively 29.1 per cent and 34.7 per cent. The rate showed

a downward trend at 34.5 per cent at the end of the first quarter of 2012. The Committee also notes that the NAPE for 2012–14 provides for the simplification of the procedures for running employment agencies while increasing the protection of their customers; the development of the cooperation system between local authorities and employment agencies in order to improve the efficiency and effectiveness of actions for the disadvantaged groups in the labour market. The Government further indicates that it aims to improve the quality of labour market services through mass training of staff of labour offices. As part of a training project, more than 2,300 employees of labour offices were trained and a second training programme will address the training needs of 940 counsellors of public employment services. The Committee notes the comments provided by Solidarność indicating that supervision over temporary agencies was limited and steps have been taken in order to lower professional qualifications of public employment services officers. Solidarność also suggests that the Government should take steps in order to cover the undeclared economy with the employment policy, as well as increase the amount of allocations for professional training. It adds that increased allocations should be directed towards the employment of vulnerable groups, such as unemployed women, young people, persons with disabilities, older workers, informal economy workers, migrants and farmers. ***The Committee invites the Government to provide information in its next report on the results achieved in implementing active employment measures to promote full employment and how these measures will translate into productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers, such as older workers, persons with disabilities and workers in the undeclared economy.***

***Youth unemployment.*** The Government states that high unemployment among young people remains one of the most important problems in the Polish labour market. The following factors have a significant impact on the situation of young people: little work experience and professional qualifications in conjunction with high expectations often result in unemployment. As a consequence, young people are particularly vulnerable to the adverse effects of the economic crisis. The Committee notes that the unemployment rate of young people aged 15–24 increased significantly, from 20.7 per cent in 2009 to 25.8 per cent in 2011. In order to allow this group to supplement deficits in work experience and education, and to enable taking up first employment, the Government initiated activation programmes for people under 30 years of age. In total, activation measures under the professional activation programmes covered 50,616 people in programmes such as internships, general training and vocational training, entrepreneurship programmes and subsidized employment. The Government further reports that a pilot project called “Your Career – Your Choice”, initiated in 2012, forms an integral part of the programme “Youth in the labour market”. This project involves the development of a new path to deal with customers of labour offices who are under 30 years of age, so that immediately after registration in the labour office they are offered individual support and a package of training and employment vouchers. ***The Committee invites the Government to provide in its next report information on the measures to tackle youth unemployment and the effectiveness of the various measures implemented to promote the long-term integration of young persons in the labour market. The Government might also wish to hold appropriate consultations with the social partners and representatives of the stakeholders concerned in overcoming the difficulties encountered to obtain lasting employment for young people.***

***Women’s employment.*** The Government reported in 2010 that, in recent years, the employment situation of women in the workforce improved, and that the disparity between the unemployment rate of men and women decreased. The Government indicates that the NAPE for 2009–11 identified the importance of the issue of ensuring equal access to the labour market for women and men. During this period, a number of initiatives co-financed by the European Social Fund were implemented, which were aimed at strengthening the position of women in the labour market by overthrowing the existing stereotypes, raising the level of awareness among workers and labour market institutions, as well as providing access to institutionalized forms of childcare. The Government reports on the introduction of mechanisms to counter discrimination, with particular emphasis on discrimination against women, in employment promotion and access to the labour market. The Government reports that the unemployment rate for women was 10.9 per cent in 2011, compared with 8.8 per cent for men. More than 64 per cent of unemployed women in the fourth quarter of 2011 had a secondary, post-secondary or higher education, while among men the rate was 43.4 per cent. Furthermore, women accounted for 54.7 per cent of all unemployed persons who participated in activation programmes in 2011. ***The Committee encourages the Government to pursue its efforts to combat the stereotypes regarding the roles of women and men in society and at work, and it invites the Government to provide in its next report information on the impact of the measures adopted to ensure that women have the fullest possible opportunity to qualify for and use their skills, in accordance with Article 1(2)(c) of the Convention.***

***Consultation with the social partners.*** The Committee notes the observations submitted by Solidarność indicating that trade unions are deprived from their role in participating in the administration of the labour market as the General Employment Council, where trade unions have their representatives, does not perform either an administrative or supervisory role. It further indicates that proposals of legislative changes are often presented in a manner which prevents social partners from expressing their opinion and being duly consulted. 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 (General Survey, 2010, paragraph 788). ***The Committee invites the Government to provide in its next report detailed information on the involvement of the social partners in the formulation and implementation of employment policies and programmes.***

## 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 takes note of the detailed statistics supplied in the Government's report received in August 2012 in reply to points raised in the 2011 observation. The Government indicates that in 2011, Romania's active population stood at an estimated 9,868,000 persons, of whom 9,138,000 were employed and 730,000 unemployed; the recorded average employment rate dropped from 7.6 per cent in 2010 to 5.38 per cent in 2011, falling to 5.05 per cent in March 2012. The Government is of the view that unemployment among persons over 45 years of age and among single persons with dependent children remains one of the most acute labour market problems. Through the employment programme implemented by the National Employment Agency (ANE), 377,772 persons found employment in 2011. Furthermore, most of the objectives set by the National Employment Programme for 2011 appear to have been met. The Government indicates that the ANE has implemented projects financed by the sectoral operations programme for the development of human resources (POSDRH 2007–13) in order to anticipate changes in the labour market and consolidate the capacity of the public employment services at national and local level. The National Reform Programme 2011–13 (PNA 2011–13) includes among the key priorities for attaining national employment objectives, the improvement of the operation of the labour market by facilitating the transition from unemployment or inactivity to employment, the enhancement of workers' skills, the improvement of the quality of employment of persons in rural areas, young people and women. ***The Committee invites the Government to provide in its next report information on the attainment of the objectives of the 2011–13 employment programme. It hopes that the next report will also contain an evaluation of the measures taken under the economic and financial policy in terms of sustainable growth and productive employment.***

*Categories of vulnerable workers.* The Committee notes the information supplied by the Government on the results obtained in 2011 following the implementation of specific employment subsidization measures. Of the 324,000 persons employed under such measures, 13,420 were unemployed persons over 45 years of age, 1,230 were sole breadwinners of single-parent families, 315 were three years away from retirement and 250 were persons with disabilities. ***The Committee invites the Government to provide in its next report up-to-date information on the measures designed to improve the employability of vulnerable workers and on the results obtained in terms of sustainable integration in the labour market.***

*Youth employment.* The Government indicates that in 2011, the unemployment rate among young people (15-24 years) was 23.8 per cent and that the incidence of long-term unemployment among young people was some 63.4 per cent. The Committee notes the amendments introduced to Act No. 279/2005 by Act No. 06/2011, such as the abolition of the obligation on employers to obtain authorization and the master craftsman's certificate, the determination of the minimum and maximum length of apprenticeship contracts in workplaces, the obligation on the employer to organize an evaluation of the apprentice's theoretical and practical training, and the linkage between the length of the apprenticeship contract and the level of skill acquired. The purpose of these amendments is to remove obstacles to access to employment, for unskilled young people among others. Furthermore, according to the information supplied by the Government on the results of the ANE's employment programme as they pertain to young people: in 2011, 73,113 of them were engaged in employment; this was also the case for 3,813 long-term unemployed and 94 graduates aged 18 or more from social establishments. ***The Committee invites the Government in its next report to provide up-to-date information allowing it to assess the impact of the measures taken to facilitate lasting employment opportunities for young people.***

*The Roma minority.* In its previous comments the Committee pointed out that social exclusion is harmful to those directly affected and breeds negative social consequences across generations (General Survey concerning employment instruments, 2010, paragraphs 554 and 566). In its report, the Government states that actions to secure the social and economic integration of persons belonging to the Roma community are ongoing, provided for in the 2001–10 National Strategy to improve the status of the Roma. The implementation of the aforementioned programme resulted in the hiring of 2,250 persons in 2011. Furthermore, 64 persons found jobs in the course of 2011 thanks to the employment exchange organized for persons belonging to the Roma community. The Committee notes that the results of the ANE's National Employment Programme for the Roma appear to be lower in 2011 than in 2010. The Government's report states that 6,696 Roma found employment in 2010 as compared to 5,760 in 2011. ***In view of the progress still to be made in promoting the inclusion of the Roma minority into the labour market, the Committee invites the Government to provide detailed information in its next report on measures designed to enhance the social cohesion of the Roma minority.***

*Education and training policies.* The Government's report refers to continuous training programmes financed out of the unemployment insurance budget, thanks to which, in the period from 1 January 2011 to 31 January 2012, 50,155 persons received vocational training with a view to employment, of whom 17,850 were hired. The report also refers to the priorities set in the POSDRH 2007–13, which include improving the adaptability of the workforce and enterprises and the promotion of active employment measures. In its observation of 2010, the Committee observed that very few newly employed young workers and long-term unemployed persons (young persons as well as adults) had obtained employment as a result of their participation in vocational training programmes. ***The Committee invites the Government to provide detailed information of the measures taken under the POSDRH 2007–13, particularly measures***

*to enhance the quality and relevance of the education and training provided. It again invites the Government to provide information on the impact of the training programmes in terms of job opportunities created for the unemployed, young persons, the Roma minority and other categories of vulnerable workers.*

*Promotion of small and medium-sized enterprises.* In reply to the Committee's previous comments, the Government states that in 2011, 50 persons found employment due to loans granted to small and medium-sized enterprises for the purpose of creating jobs, and a further 710 persons started businesses thanks to the guidance and assistance services provided to engage in self-employed activities or to start a new business. ***The Committee invites the Government to include information on the continuation of the measures undertaken to support the creation of small and medium-sized enterprises and on their impact in terms of stimulating employment.***

*Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government states that Act No. 62 of 10 May 2011 on social dialogue provides that the social partners are to be consulted on draft legislation and on other economic and social activities. ***The Committee invites the Government in its next report to provide specific examples of how the Act on social dialogue has allowed the social partners to be effectively consulted and to participate in decision-making on the matters covered by the Convention. Please also include information on the measures taken or envisaged to ensure that these consultations include representatives of other sectors of the active population, particularly representatives of the Roma minority and of persons working in the rural sector and the informal economy.***

## Sao Tome and Principe

### **Employment Service Convention, 1948 (No. 88) (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:

*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 near future.***

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)**

The Committee notes with *regret* that the Government's report has not been received since 2007. 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 brief reply provided by the Government in March 2007 indicating that owing to a lack of human, material and financial resources, the Ministry of Labour still does not have a centre to deal with persons with disabilities. Therefore, there are currently no policies of any kind relating to the matters covered by the Convention. The Committee also notes that there is a single NGO which deals with issues relating to persons with disabilities. Owing to the lack of material and financial resources, this NGO has been able to do very little for persons with disabilities. ***The Committee hopes that the Government will demonstrate its commitment to the Convention and will be able to provide in its next report detailed information on the measures adopted or envisaged to promote employment opportunities in the open labour market for persons with disabilities within the meaning of the Convention.*** The Committee recalls that the Government may request technical advice and assistance from the Office for the implementation of a national policy to provide vocational rehabilitation and to promote employment opportunities for persons with disabilities as required by the Convention.

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



## Senegal

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Committee takes note of the Government's reply received in August 2012. The Government recalls that it has been involved in reformulating its new national employment policy (NPNE) since 2006, which covers the period 2010–15, and aims to place employment issues at the heart of the economic and social development strategy. Elaborated on a tripartite basis, the NPNE has three specific objectives: to alleviate the pressure of unemployment in urban areas; to develop rural employment and slow down the rural exodus; and to improve the employability of a constantly growing labour force and the quality of employment. The Government points out that although work on reformulating the NPNE has ended, it has not yet entered into effect on account of the changes that have occurred since the elections. The Government also indicates that in order to correct the labour market imbalances that have widened despite its efforts, the Senegalese State has embarked upon two major programmes in the context of the implementation of the NPNE: the Decent Work Country Programme (DWCP), which constitutes the ILO's contribution to the economic and social policy document (DPES); and the programme "Young employment promotion taking into account migration issues", which is the outcome of a joint initiative of the United Nations system. ***As the NPNE has not yet entered into effect, the Committee 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 to indicate in its next report the results achieved by the measures implemented in the context of the poverty reduction strategy to promote full, productive and freely chosen employment.***

*Article 2. Collection and use of employment data.* The Government states that the employment market information system is slow to get under way due to its limited human and material resources. It reports nonetheless on a certain number of activities that have been carried out since 2008. ***The Committee requests the Government to continue providing information on any progress made in the context of these activities.*** In particular, the Government refers to the monitoring of employment that has featured in the DPES since 2008, the work on implementing a national employment and vocational qualifications observatory, and the coordination in drafting the African Operational Directory of Occupations and Jobs (ROAME). The Government also states that the National Agency for Statistics and Demography (ANSD) is planning, with the members of the National Statistics System, to introduce an annual national inquiry on employment and occupational qualifications from 2013 onwards. Furthermore, the Committee notes that the ANSD has decided to devote the 2010 issue of "The country's economic and social situation" to an analysis of the lack of data on employment issues. According to this same publication, the potentially active population of young persons aged 15 years and over increased from 5,678,497 in 2002 to 7,299,215 in 2010, accounting for 202,000 new jobseekers on average each year. The unemployment rate varies between 10 and 14 per cent according to the sources and remains very high among young persons aged 15 to 34 years. However, the visible underemployment rate, which was 22 per cent in 2006, was allegedly 15.2 per cent in 2010, whereas the overall activity rate is estimated to be 50 per cent. ***The Committee invites the Government to provide information on employment trends, in particular on developments in unemployment and underemployment.***

*Article 3. Participation of the social partners in the design and formulation of policies.* In reply to its previous comments, the Government states that the Higher Employment Council, in accordance with Decree No. 1406 of December 2009, was officially inaugurated by the Prime Minister on 15 September 2011. According to the Government, the social partners are involved in the elaboration and implementation of the national employment policy (PNE). They are members of the Higher Employment Council and took an active part in the adoption of the PNE, as well as in all stages of its implementation. ***The Committee hopes that the Higher Employment Council will soon resume its activities and that the Government will be able to provide information on these. The Committee also asks the Government to indicate the way in which the experience and opinion of the social partners were taken into account in the implementation of the NPNE.***

*Part V of the report form. ILO technical assistance.* The Government indicates that the cooperation with the ILO, when it was examining ways to devise a strategy to formalize the informal economy and update the draft NPNE, resulted in the holding of a forum on the strategy of formalization and funding for the elaboration of the NPNE, as well as support for its implementation. Furthermore, the Government states that the PNE, the programme "Youth employment promotion taking into account migration issues" and the DCWP were elaborated on a tripartite basis with the involvement of all the social partners and actors concerned. ***The Committee invites the Government to continue providing detailed information on initiatives that have benefited from cooperation with the ILO, in particular on the impact these might have on employment.***

## Sierra Leone

### **Employment Service Convention, 1948 (No. 88) (ratification: 1961)**

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.

*Contribution of the employment service to employment promotion. ILO technical assistance.* The Committee previously noted the Government's statement, contained in a report received in June 2004, indicating that the legislation on employment services has been included on the agenda of the Joint Advisory Commission for discussion. It was the Government's intention to provide a new mandate to employment services so that they are transformed into dynamic labour market information centres. The new employment services will have to cover not only urban centres but also rural areas and ensure the provision of information, planning and the application of employment policies throughout the country. The Government also stated that ILO technical assistance is required to achieve its objectives. The Committee welcomed the fact that the Government was proposing to strengthen employment services. It also recalled that the Office provided support for programmes for the generation of employment opportunities by strengthening employment services for young persons. ***The Committee hopes that the Government will be in a position to describe in its next report the manner in which the employment service reforms have contributed to securing their essential duty, which is 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" (Article 1 of the Convention), in cooperation with the social partners (Articles 4 and 5). In this respect, the Committee would be grateful if the Government would provide the statistical information that has been compiled concerning 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 (Part IV of the report form).***

## Slovakia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1993)**

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 2009 observation.

*Articles 1 and 2 of the Convention. Active labour market measures. Youth unemployment.* The Committee noted in its 2009 observation the Government's report received in November 2008. It noted that youth unemployment had decreased (from 26.6 per cent in 2006 to 20.3 per cent in 2007) due to more targeted active labour market policy measures and increased participation in education and training. The Government referred to the school leavers' work experience programme as an efficient active labour market tool designed to prevent long-term unemployment of young persons under 25 years of age. This programme allows school leavers to acquire vocational skills and practical experience through work experience in a job which corresponds to the educational level they have achieved. The Committee further noted that under the National Reform Programme for 2008–10, a set of new active labour market policy measures were adopted in 2008 with the objective of decreasing regional differences in employment rates, especially in underdeveloped regions with high unemployment rates. It noted that long-term unemployment was the highest in the European Union (EU) area (8.3 per cent in 2007 with the overall unemployment rate standing at 11 per cent) and the share of older workers in the labour force was far below the EU average. As regards other measures taken to ensure coordination between lifelong learning policies and prospective employment opportunities, the Committee noted that, by Resolution No. 382 of 25 April 2007, a Strategy of Lifelong Learning and Lifelong Counselling was established. ***The Committee once again asks the Government to include information in its next report on the impact of the measures taken in tackling regional disparities and long-term unemployment with specific reference to the measures implemented under the Strategy of Lifelong Learning and Lifelong Counselling in favour of young unemployed persons.***

*Roma minority.* The Government indicated in its November 2008 report that a number of pilot projects were being carried out to create employment opportunities for members of the Roma community through partnerships with regional governments, employers, Roma organizations, NGOs and public employment services. These measures included educational activities, financial support for the establishment of municipal social enterprises, and the provision of financial subsidies for job creation under the state budget. In this connection, the Government stated that the objective to create job opportunities for the Roma minority and to offer education and training in line with the needs of the local labour market has been achieved to a modest extent. The Committee noted that a special focus was placed on improving the level of educational attainment of the Roma minority with the adoption in 2008 of a new programme for upbringing and education of the Roma children and pupils, including promotion of their secondary and tertiary education. ***The Committee once again requests the Government to report on the activities undertaken with a view to promoting productive employment of the Roma population, in particular with regard to the measures implemented to increase their success in achieving appropriate levels of qualifications and skills.***

*Article 3. Participation of the social partners in the formulation and implementation of policies.* In its November 2008 report, the Government reiterated that the comments of the social partners are duly taken into account in the elaboration of legislative and other measures to be taken in relation to employment policy, notably through consultations carried out at the national level within the tripartite Economic and Social Council. It stated that representatives of disadvantaged groups, including the Roma minority, have been consulted on the implementation of employment-related measures designed for disadvantaged jobseekers. ***The Committee once again asks the Government to provide indications in its next report on the progress made in involving the social partners in the design and implementation of employment policies.***

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

## 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 the observation made in 2010, the Committee requested the Government to provide more precise information on the manner in which it is ensured that the staff of the employment service in the Autonomous Communities of Andalusia and Galicia have the requisite skills and have received adequate training to perform the duties envisaged by the Convention. In the detailed report received in October 2012, the Government describes the legislative measures adopted to reform the labour market and promote new forms of employment intermediation. The Government indicates that to strengthen the services provided for persons seeking employment and enterprises offering employment, as a result of the measures adopted in April 2008, 1,500 employment promoters were taken on up to December 2012. The Committee notes the information provided in the report on the recruitment of new staff by the Public Employment Service of Galicia (SPEG) for employment offices. Detailed information was included in the report on the methodology adopted to develop training for the new staff. The SPEG undertook and is continuing to carry out a series of measures for the technical improvement of its services and to raise the awareness of its staff in dealing with jobseekers. The Andalusian Employment Service also provided information on the conclusion of 413 temporary employment contracts for the recruitment of staff to reinforce the network of offices in the Autonomous Community of Andalusia. The Committee notes the information provided on the total staff of the Employment Service of Andalusia and changes in that respect between 2007 and 2011. The Government emphasizes that the number of staff was increased in the provinces in which the rise in unemployment was proportionally greater. In the observations of the Trade Union Confederation of Workers' Commissions (CC.OO.), transmitted to the Government in September 2012, the view was expressed that the human resources allocated to public employment services are clearly inadequate. The budgetary cuts for public employment services were equivalent to a reduction of €3,200 million in 2012. The ratio of the unemployed to the staff of public employment services in Spain is very high. The CC.OO. indicates that the programmes of the public employment services are measured more by the number of users than their results and effectiveness in placing jobseekers. In its comments, the General Union of Workers (UGT) expresses identical concerns at the budget cuts for public employment services and the lack of human resources. The Committee recalls that *Article 6 of the Convention* provides that the employment service shall be so organized as to ensure effective recruitment and placement of workers. In its 2010 General Survey on employment instruments, the Committee indicated that consultation with the social partners is to be prioritized in the formulation and implementation of labour market policies. The essential duty of public employment services is to take action to achieve and maintain full employment. *Considering the observations made by the CC.OO. and the UGT, the Committee invites the Government to ensure that the cooperation of the social partners is secured in the organization and operation of the employment service (Articles 4 and 5). The Committee refers to the comments made on the Employment Policy Convention, 1964 (No. 122), and once again requests the Government, in view of the current circumstances of the employment market in Spain, to provide updated information in the report due in 2014 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 (Article 3). Please also provide the available published 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. The Committee hopes that this information will allow for the assessment of public employment offices' effectiveness (Part IV of the report form).*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

*Articles 1 and 2 of the Convention. Measures to alleviate the impact of the crisis.* The Committee notes the information sent by the Government in the report for the period ending in June 2012. The Committee also notes the observations sent by the Trade Union Confederation of Workers' Commissions (CC.OO.) and the General Union of Workers (UGT) and the Government's reply received in November 2012. The Government indicates that 2011 began with a slight recovery of the economy reflected in somewhat more positive trends in the labour market. From the third quarter of 2011 the process came to a halt: employment fell by 2 per cent in 2011. In the first quarter of 2012 the activity rate stood at 74.9 per cent, the occupation rate was 59.6 per cent and the unemployment rate was 24.4 per cent of the active population (unemployment rose by 4 percentage points by comparison with the same period in 2011). A total of 351,900 jobs were lost in 2011. At the end of that year, the number of unemployed persons stood at almost 5 million (with slightly more than 18 million occupied persons out of an active population of 23 million). The Government asserts that the labour reform approved by Royal Legislative Decree No. 2/2012 of 10 February 2012 issuing urgent measures for the reform of the labour market (adopted as Act No. 3/2012 of 6 July 2012) has created a regulatory framework for labour relations which are more favourable to job creation and maintenance. The Government states that it is being made easier for enterprises to adopt flexible measures in preference to the option of dismissal and it is promoting employability and stable recruitment, especially for young people. As regards the impact of Act No. 35/2010 of 17 September 2010, the Government indicates that the proportion of temporary workers decreased by nine percentage points between 2006 and 2010. However, the rate of temporary employment went back up to 25.3 per cent in 2011. The UGT considers that reducing the fiscal deficit has become the main objective of economic policy for Europe and emphasizes that this objective has hampered the recovery of both the economy and employment. The greatest impact of the adjustment

measures has been on workers and their families. The current economic recession highlights the weaknesses in the productive market in Spain. The UGT claims that the solution is not to change the structure of the labour market but to establish a different balance among the various economic sectors, foster the recovery of national demand and boost the level of public sector employment and investment. The CC.OO. also highlights in its communication that 80 per cent of jobs lost between the first quarter of 2008 and the first quarter of 2012 have been jobs held by men, especially young men under 25 years of age. The most affected sector is construction. The Committee notes that in order to know the effects of the labour market reform undertaken since February 2012 and to quantify its macro-economic impact, the Government relies on a simulation which has foreseen an adjustment in wages and hours of work instead of a loss of jobs. The positive impact hoped for from the 2012 labour reform is an increase of 4.5 percentage points in the level of potential GDP. The corresponding rise in employment will result in a permanent reduction of 3.2 percentage points in the structural component of the unemployment rate. The Government admits that if the current credit terms and the debt levels of enterprises persist, it is only from 2014 that the impact of the labour reform on the number of persons in employment will be seen. ***In view of the precedence given to economic policy objectives indicated by the trade union organizations and the deterioration that has occurred in the employment situation since the observation made in 2010, the Committee invites the Government to indicate in its next report the manner in which Article 2 of the Convention is applied, namely whether a regular review is undertaken of the measures and policies adopted for attaining the objectives specified in Article 1. The Committee recalls that, under the provisions of Article 1 of the Convention, an active policy designed to promote full, productive and freely chosen employment must be declared and pursued as a major goal.***

***Article 3. Participation of the social partners.*** The Government refers in its report to the various tripartite agreements concluded in 2011 and January 2012. The trade union organizations denounce the lack of social dialogue and the failure to comply with the agreements reached in the context of the 2nd Agreement on Employment and Collective Bargaining for 2012, 2013 and 2014, signed on 25 January 2012. The Committee points out once again that social dialogue is essential in normal times and becomes even more so in times of crisis. ***The Committee invites the Government to indicate in its next report the manner in which the experience and views of the social partners have been taken into account in the formulation and implementation of employment policy measures. The Government is also requested to state to what extent consultations have been held with representatives of the persons affected by the measures taken, particularly young persons, to enable an evaluation of the effective application of Article 3 of the Convention.***

***Long-term unemployment. Youth employment.*** The Government indicates that the balance of the results concerning the long-term unemployed in 2011, matching the deterioration in the employment situation, was negative. In the first quarter of 2012, a total of 2,822,500 persons were affected by long-term unemployment, 200,000 more than in the previous quarter. The incidence of long-term unemployment is slightly higher among adults than young people. The situation of young people followed the general trend, with a rise in the rate of youth unemployment. The Government lists the actions taken to improve the employability of young persons and the various job contracts available for young people. The UGT states that the numbers of long-term unemployed exceed those who have been unemployed for one or two years. The labour reform of 2012 will worsen the situation for young people by increasing precarity and reducing protection. The CC.OO. also states that university graduates are competing with those with vocational diplomas in the labour market, thereby leading to a perceived loss in value for vocational training. Many young persons have spent a greater amount of time studying without being able to find a job subsequently. ***The Committee invites the Government to include in its next report up-to-date information on the impact of the measures taken to facilitate the return to the labour market of long-term unemployed persons. The Committee hopes that the information sent by the Government will enable it to examine the quality of employment provided for young people who have been the recipients of special contracts and measures taken to promote youth employment, particularly for young persons with few qualifications.***

***Integrated labour market policies.*** The Government states that labour legislation is of general application and hence there are no distinctions of a geographical nature except for specific mechanisms that only apply to certain autonomous communities such as Andalucía and Extremadura, which have higher unemployment rates and to which specific measures relating to agriculture are applied. The CC.OO. states that the crisis has worsened labour-related differences between regions. The unemployment rate has reached alarming levels, exceeding 30 per cent in the first quarter of 2012 in Andalucía, the Canary Islands and Extremadura; at the same time, the unemployment rate has ranged from 13 to 17 per cent in the Basque Country and Navarra owing to the presence of more industry, the lesser impact of the real estate bubble and their fiscal status. The UGT adds that the autonomous communities with less income and high unemployment rates display higher rates of temporary employment (Andalucía, Extremadura and Murcia). ***The Committee again requests the Government to include up-to-date information in its next report on the measures taken to reduce regional disparities so as to attain a better balance in the labour market.***

***Education and vocational training policies.*** The Government indicates that the Sustainable Economy Act, which was referred to in the observation of 2010, has been supplemented by Organic Act No. 4/2011 of 11 March 2011. The Committee notes the other information sent by the Government on the impact of the measures adopted under the 2011 National Reform Plan and the new measures introduced in 2012. The CC.OO. suggests that an evaluation should be undertaken of the positive impact of the programmes for cooperation with the autonomous communities, whose purpose is to reduce school drop-out rates and increase the provision of vocational training. The CC.OO. recalls that the renewal of the tripartite agreement on vocational training is pending and regrets that changes have been made unilaterally to the

training model through the labour reform of February 2012. The Committee recalls the close link established in the 2010 General Survey concerning employment instruments between achieving full employment and decent work and the adoption of innovative education and training policies for jobseekers. *The Committee asks the Government to include in its next report up-to-date information on the measures taken to improve qualification standards and coordinate education and training policies with potential employment opportunities. The Committee invites the Government to include information, in the report due in 2013 on the application of the Human Resources Development Convention, 1975 (No. 142), to enable it to evaluate the manner in which efforts have been intensified, with the cooperation of the social partners, to ensure that vocational guidance and training systems meet the learning and vocational training needs of the most vulnerable groups in the regions worst affected by the crisis.*

*[The Government is asked to reply in detail to the present comments in 2014.]*

## Sudan

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2011 observation which read as follows:

*Articles 1 and 2 of the Convention. Policies to promote employment and coordination with poverty reduction.* In reply to its 2009 observation, the Government provided in September 2010 a brief report in which it recalled that, in the context of the five-year plan for the period 2007–11, a comprehensive strategy was adopted under which small employment projects aimed at poverty reduction were funded by the Government in collaboration with the Federation of Employers. Job opportunities were also created through funding and training activities for graduates and persons with disabilities. The Government also paid special attention to projects aimed at combating desertification and providing income-generating activities in regions suffering most from poverty. In its 2009 observation, the Committee noted that about 60–70 per cent of the population in the north and 90 per cent in the south of the country are estimated to be living below the poverty line, with incomes of less than US\$1 per day. Persons living in rural areas, in particular women and internally displaced populations, are the hardest hit by poverty. Beyond the state of Khartoum, the infrastructure is either non-existent or underdeveloped. The Committee once again recalls that the UN adopted a policy for post-conflict employment creation, income generation and reintegration which stresses that, in post-conflict situations, employment is vital to short-term stability, reintegration, economic growth and sustainable peace. *The Committee asks the Government to report in detail on the measures taken to develop and implement an active employment policy within the meaning of the Convention, with the assistance of the ILO and other international agencies. The Government is also asked to provide detailed information on the results obtained, in the context of the five-year plan for 2007–11, in meeting the employment needs of vulnerable categories of workers, such as women, young persons, older workers and persons with disabilities.*

*Collection and use of labour market data.* In its 2009 observation, the Committee noted that the Government carried out a population census in 2008 in order to compile information needed by planners and policy-makers. The Government expressed its intention to release the results of the census in 2009 and to prepare a survey for the collection of data and information on the labour market. In this respect, the Committee notes that the ILO provided training to concerned staff to carry out a labour market survey. *The Committee invites the Government to provide in its next report an account of the progress made to improve the labour market information system and to include detailed statistics on the situation and trends in employment, specifying the manner in which the collected data has been used to determine and review employment policy measures.*

*Article 3. Participation of the social partners in policy preparation and implementation.* The Government refers in its report to the formulation and implementation of an employment policy in line with the Global Jobs Pact. It also indicates that a national charter was formulated with the full participation of the social partners. The Government intends to provide the Committee with information on the development of the national charter in a subsequent report. 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 expresses its firm hope that the Government will supply detailed information in its next report on the consultations held with the social partners on the formulation and implementation of an active employment policy. It also requests the Government to supply information on the consultations held with the representatives of the persons affected by the employment measures to be taken, such as those working in the rural sector and the informal economy.*

*Technical assistance to fulfil reporting obligations and the requirements of the Convention.* *In view of the difficulties to comply with the reporting obligations under the Convention during these past few years and the lack of information in the last report received, the Committee notes that the preparation of a detailed report, including the information requested in this observation, will certainly provide the Government and the social partners with an opportunity to evaluate the effectiveness of the employment policy in meeting the objectives of full and productive employment set out in the Convention. In this regard, the Government might wish to request technical assistance from the relevant units of the ILO to address gaps in the implementation of an active employment policy within the meaning of the Convention.*

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

## Sweden

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1965)**

*Articles 1, 2 and 3 of the Convention. Active labour market policies. Consultation with the social partners.* The Committee notes the Government's report for the period ending in June 2012, including replies provided to previous comments formulated in 2011. The Government states that since its last report the labour market has gradually improved in Sweden. It reports that the positive development seen in the labour market over the past two years can be attributed to both the recovery and Government reforms. It indicates that the focus of Government reforms is on strengthening the

conditions for groups with a weak foothold in the labour market, such as young people, people with a foreign background and other groups with high long-term unemployment, to obtain work. Signs that the reforms have improved the labour market's functioning include labour force participation and employment levels, which have increased among young, middle-aged and older people. The Committee notes that the labour force participation rate was 71 per cent in 2011. Compared to 2010, the rate increased among women by 0.6 percentage points to 68 per cent, while the corresponding rate for men was 73.9 per cent. Despite these positive developments, the Government indicates that resource utilization in the labour market is low and traces of the financial crisis are still evident. On average, the number of unemployed persons was 378,000 in 2011, a decrease of 38,000 compared to 2010. The unemployment rate was 7.5 per cent in 2011, a decrease of 0.9 percentage points compared to the previous year. To address the weak developments in the labour market, the Government proposed a labour market package in the Budget Bill for 2012. This package includes measures to improve the Public Employment Service in the form of stronger support and mediation for those at risk of long-term unemployment and better monitoring of jobseeking activities. It also includes a higher quality and more activities in the special employment support mechanism and the job guarantee for young people. The Public Employment Service and the Swedish Social Insurance Administration were assigned in 2012 to expand their cooperation with the aim of reaching more people on long-term sick leave to help them return to the labour market. The Government states that its primary goal is to lead Sweden towards full employment through less exclusion. The value of work, which provides freedom, community, security, and opportunities, cannot be emphasized enough. It adds that changes have not only been carried out in labour market policy but also in other policy areas, including tax and education policies and social insurance. The Committee notes that in the long run, the Government is set on matching the Swedish education system both to new challenges in a globalized world and to the needs of the labour market. The Government indicates that more vocational training and a closer cooperation between schools and universities and the business community have been identified as measures to accommodate those needs. ***The Committee invites the Government to provide in its next report information on the effects of its labour market policies on sustainable and productive employment generation. It also invites the Government to include further information on the measures taken in the area of education and training policies and on their relation to prospective employment opportunities. Please also provide updated information on the consultations held with the social partners on the matters covered by the Convention, and the effects of the sickness insurance reform on employment.***

*Women, youth, long-term unemployed, immigrants and persons with disabilities.* The Government indicates that unemployment spells are generally short in Sweden, but long-term unemployment is still high and the number of people who are long-term unemployed is likely to increase in the coming years. An important challenge will be to ensure that people facing long-term unemployment receive the support they need to find work, and at the same time prevent the number of long-term unemployed people from growing. The Committee notes that the number of long-term unemployed (defined as over 27 weeks) decreased from 132,000 in 2010 to 113,000 in 2011, corresponding to 33 per cent of the unemployed. With respect to young persons (age 15–24), the employment rate was 40.4 per cent in 2011, an increase of 1.9 percentage points compared to 2010. Among the foreign born (age 15–74), the employment rate was 56.2 per cent in 2011, an increase of one percentage point compared to the previous year. The unemployment rate was 22.9 per cent among youth and 15.8 per cent among the foreign born. The Government indicates that the Introduction Act has been in place for over a year and is geared towards helping newly arrived refugees and their families become established more quickly in the labour market. The Government has also appointed a commission to propose initiatives that will increase the labour market participation and speed up the establishment of newly arrived foreign-born women and immigrants joining their families in Sweden. With respect to persons with disabilities, the Government reports on its strategy for disability policy during 2011–16 and measures taken to help people with disabilities find employment. It further reports that in December 2011, the Public Employment Service together with the Swedish Agency for Government Employers, the Swedish Agency for Disability Policy Coordination (Handisam), the Swedish Work Environment Authority, and the central state employee organizations were assigned to develop a proposal for an internship programme at state authorities for persons with disabilities, including how it should be formed and implemented. ***The Committee would welcome continuing to receive detailed information on the efforts made to improve the employment situation of women, youth, long-term unemployed, immigrants and persons with disabilities.***

## Thailand

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1969)***

The Committee notes that the Government's report due in 2012 has not been received. It hopes that a report will be supplied for examination by the Committee at its next session in 2013 and that it will contain full information on the matters raised in its 2011 observation.

*Follow-up of the discussion at the 99th Session of the International Labour Conference (June 2010).* In its 2011 observation, the Committee noted the replies provided by the Government containing information on the measures taken to promote employment for persons with disabilities, women in remote areas and workers in the informal economy. According to the data from the National Statistical Office, 24,300,000 workers, representing nearly half of the entire active labour force, were in the informal economy. The Committee also noted that studies performed by two academic institutions concluded that Thai workers in the informal economy definitively need benefits from the Social Security Fund. The Government referred to the second Small and Medium Enterprises Promotion Plan for 2007–11 among other measures to enhance the capacity of business

and enterprises to tackle the global economic crisis. *The Committee asks the Government to provide in its next report updated information on the impact of the measures taken to promote full, productive, freely chosen and decent employment for vulnerable categories of workers, in particular for workers in the informal economy. Please also include information on the extent, trends and coverage of social security benefits for workers in the informal economy, as well as on the steps taken to coordinate active labour market measures with social security benefits.*

*Articles 1, 2 and 3 of the Convention. Coordination of employment policy with poverty reduction. Involvement of the social partners.* The Government recalled the three strategic objectives of the Tenth National Economic and Social Development Plan for 2007–11: development of human potential and social protection, sustainable restructuring of rural and urban development, and upgrading national competitiveness. Between October 2009 and September 2010, the Government provided some assistance to workers that were unemployed as a consequence of the global economic crisis. The Committee noted that a Code of Practice to Promote the Labour Relations in the Economic Crisis was adopted by the social partners in 2008. In its contribution received in February 2011, the National Congress of Thai Labour (NCTL) recalled that most Thai people have lived in poverty, and indicated that the disparity of income generation was rather high. The NCTL asked the Government to formulate concrete policies and measures to alleviate income disparities. *The Committee asks the Government to include in its next report information on the results obtained in terms of employment generation concerning the Tenth National Economic and Social Development Plan and to provide details on the employment objectives formulated following the 2007–11 Plan, in addition to directions of the next national plan. In this regard, the Committee stresses the importance of promoting and engaging in genuine tripartite consultations on the matters covered by the Convention. The Committee therefore asks the Government to include in its next report detailed information on the consultations held with the social partners to formulate and implement an active employment policy as required by Article 3 of the Convention.*

*Labour market and training policies.* The Government indicated that the National Committee on Skills Development Coordination and Labour Development was set up under the authority of the Prime Minister. In 2010, the Department of Skills Development formulated a new strategy to take into account the impact of the global economic crisis. Furthermore, the Committee noted that the Government provides online labour market information. The NCTL expressed the view that the skills development scheme does not respond to the needs of the labour market. The cooperation between skills development institutes and enterprises in implementing the measures should be taken into account. In its 2010 General Survey concerning employment instruments, 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, as well as how the coordination between training institutions has been strengthened. Please also indicate how skills development measures are coordinated with active labour market measures.*

*Women. Prevention of discrimination.* The Government indicated that there is no discrimination towards women and that women have equal opportunities and market access. The Committee noted the statistical data disaggregated by gender provided by the Government in its report on the number of jobseekers registered with the Department of Employment who obtained jobs, as well as on the training courses provided. *Referring to its comments on the Equal Remuneration Convention, 1951 (No. 100), the Committee requests the Government to clarify to what extent the data provided in its report on Convention No. 122 shows that the principle of non-discrimination is being implemented effectively in practice. It also invites the Government to continue to provide information on initiatives taken to promote increased participation of women in the labour market. Please provide further information, including statistics, on the effects of such initiatives in ensuring that there is freedom of choice of employment, and that each worker shall have the fullest possible opportunity to qualify for, and to use his or her skills in a job for which he or she is well suited in the conditions set out in Article 1(2)(c) of the Convention.*

*Migrant workers.* The Government previously recognized that it faces a challenge concerning migrant workers related to political, social, economic, health care and national security issues. Having realized the difficulties that migrant workers face in terms of harassment from employers and employment agencies, including the threat of human trafficking, the Ministry of Labour carried out various measures to register migrant workers, especially illegal migrant workers, and to enhance the labour inspectorate for these workers. The Government mentioned the Declaration of 3 August 2010 for dignity and work aimed to protect Thai workers working overseas and migrant workers working in Thailand and to prevent human trafficking, to reduce service fees and expenses on employment services and to take care of the families of the workers concerned. The Committee noted that the NCTL expressed concerns about the practices and measures taken by the Government to tackle the difficulties concerning migrant workers. The NCTL further indicated that an extensive number of unregistered alien workers, who do not possess any national identity certificates, are still remaining. Unregistered alien workers are unable to enjoy their rights with regard to access to labour protection and social security coverage, as required by Thai law and regulations. *The Committee requests the Government to act expeditiously and to report in detail on the effective measures taken to address and resolve issues relating to migrant workers, with due regard to gender sensitivity. It also requests the Government to provide information on the results obtained in the framework of an active employment policy to prevent abuse in the recruitment of foreign workers and the exploitation of migrant workers in Thailand, with due regard to their fundamental rights.*

*Older workers.* The NCTL indicated that priority should be given to extend medical coverage, retirement savings and employment opportunities for older workers. *The Committee invites the Government to include in its next report information concerning the measures taken or envisaged in order to better integrate older workers into the labour market.*

*Workers in the rural sector and the informal economy.* The Government reported on the project for emergency employment and skills development to mitigate the suffering of people from economic crisis and natural disasters. Emergency employment includes hiring workers for public interest work like dredging canals and ditches and building dams. *The Committee invites the Government to indicate how the emergency schemes implemented gave the opportunity for its beneficiaries to qualify for and use their skills in decent jobs for which they are well suited, as required by Article 1(2) of the Convention. In this respect, the Committee invites the Government to report on the quantity and quality of job opportunities for homeworkers, with special attention to the situation of women, and on the impact of the measures taken to reduce the decent work deficit for male and female workers in the informal economy and to facilitate their transition into the labour market, and to accord them adequate protection.*

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

## Tunisia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Implementation of an active employment policy.* In reply to the 2011 observation, the Committee notes the statement forwarded by the Government in June 2012. The Government indicates that the problem of unemployment is one of the principal causes of the Revolution of 14 January 2011. It adds that unemployment is a major challenge for the country: unemployment was in excess of 18 per cent of the population at the end of 2011 (13 per cent in 2010) and represents the essential cause of poverty. Youth employment is one of the major challenges for the Government, particularly in relation to the employment of those completing higher education, who number 80,000 a year. The unemployment rate among those completing higher education is 30 per cent. In its previous comments, the Committee emphasized the importance of being able to examine information on the manner in which the main elements of economic policy contribute, “within the framework of a coordinated economic and social policy” (*Article 2 of the Convention*), to achieving the objectives of full, productive and freely chosen employment. **The Committee invites the Government to provide information in its next report on the results achieved and the difficulties encountered in the achievement of the employment policy objectives set out in the Government’s new programmes, including updated quantitative information on the trends and results of the measures established to stimulate growth and economic development, raise living standards, meet labour force needs and resolve the problem of unemployment and underemployment (Article 1(1)).**

*Compilation and use of employment data.* The Committee notes the indications made by the National Institute of Statistics: the number of unemployed aged 15 and over reached 738,400 in December 2011 (or an increase of over 50 per cent in relation to the number for 2010). The Government explains this increase by the substantial decrease in investment and the loss of jobs in agriculture, tourism, industry and services. In 2011, the unemployment rate was much higher for women, reaching 28.2 per cent, compared with 15.4 per cent for men. **The Committee invites the Government to indicate the manner in which the data compiled have been used to promote long-term employment among the most vulnerable categories of workers, such as women, youth, older workers, rural workers and workers in the informal economy.**

*Labour market policies to promote balanced and integrated regional development.* The Government indicates that the problem of unemployment worsened in the west (26.9 per cent) and the south-west (29.5 per cent). In the north, the rate varies between 14.5 and 22.3 per cent. In governorates without economic fabric, unemployment reaches 40 per cent. **The Committee once again invites the Government to provide information on the results achieved, in collaboration with the social partners at the regional and local levels in terms of job creation with a view to overcoming the backlog in employment between regions.**

*Promotion of small and micro-enterprises.* In its previous comments, the Committee expressed the desire to examine the measures adopted “in order 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)). The Committee understands that one of the principal objectives of the employment programme of the Provisional Government is the development of entrepreneurship and the creation of micro-enterprises, as well as support and follow-up at all the stages of enterprise development. **The Committee invites the Government to provide detailed information in its next report on the results achieved through these initiatives.**

*Article 3 of the Convention. Participation of the social partners in the formulation and application of policies.* With reference to its concluding remarks in the 2010 General Survey concerning employment instruments, the Committee once again emphasizes that social dialogue, which is already essential in periods of economic stability, becomes even more important in times of crisis (paragraph 794 of the 2010 General Survey). The Committee emphasizes the importance of giving full effect to *Article 3* of the Convention, particularly in the new constitutional context and against the background of persistent unemployment. **The Committee hopes that the next report will contain precise information on the consultations held with the representatives of the social partners on the subjects covered by the Convention. It also requests the Government to provide information on the consultations held with the most vulnerable categories of the population, and particularly with representatives of workers in rural areas and in the informal economy, with a view to securing their collaboration in the formulation and implementation of employment policy programmes and measures.**

*[The Government is asked to reply in detail to the present comments in 2014.]*

## Uganda

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

*Article 2 of the Convention. Labour market information system.* In its report received in June 2012, the Government indicates that the Labour Market Information Unit (LMI) is a small structure in the Directorate of Labour where capacity building is needed in order to enable the LMI to carry out regular studies on different aspects of employment and labour. The Committee notes with *interest* the detailed statistical information contained in the second issue of the *Labour Market Information Bulletin* was published in 2010. It further notes that Uganda is among the countries participating in the Project on the Improvement of Labour Market Information in Africa (2010–12) funded by the African Capacity Building Foundation. The overall objective of the project is to develop the capacity to collect,



analyse and disseminate labour market information in a continuous and timely manner. *The Committee invites the Government to include in its next report up-to-date information on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country and in the different regions, by sector of activity, sex, age and level of qualifications.*

*Articles 1 and 2. Coordination of employment policy with poverty reduction.* Following its previous observations, the Committee recalls that the National Employment Policy (NEP) for Uganda was completed, adopted by Cabinet and launched by the President in May 2011. The NEP addressed the problems of unemployment, underemployment, labour productivity and poverty in the country. Furthermore, the NEP stressed that despite Government poverty reduction efforts, the number of Ugandans living under poverty (7.5 million according to the data provided by the Uganda Bureau of Statistics (UBOS) in 2009) is still high and that addressing unemployment and underemployment is one of the ways to further reduce poverty levels. *The Committee invites the Government to provide information in its next report on the results achieved and the difficulties encountered in attaining the employment policy objectives set out in the National Employment Policy, including results of the programmes established to stimulate growth and economic development, raise living standards, respond to labour force needs and resolve the problems of unemployment and underemployment.*

*Promotion of youth employment.* The Committee recalls that the NEP indicated that the population was predominantly young with children and youth constituting 75 per cent of the total population. According to the UBOS, the youth population was estimated to increase from 5.4 million in 2002 to 8.5 million in 2015. Despite the introduction of universal primary education, the majority of new entrants to the labour force over the period 2002–03 to 2009–10 had not completed primary education. Poor training, low productivity jobs and low wages trap the working poor and exclude young persons from participating in economic growth. The Committee notes that the NEP also emphasized that the youth requires to be instilled with, among others, a positive work culture, commitment and dedication to work, including discipline, career guidance and counselling and provision of skills to enable them to meet the current needs of the labour market. *The Committee invites the Government to provide information in its next report on the results of programmes concerning education and vocational training for young persons. Please also 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.*

*Promotion of women's employment.* The Committee recalls that women represent over 50 per cent of the labour force. A larger percentage of the female rather than the male labour force is illiterate. Unequal access to education restricts women to sectors with low productivity and low wages, and most of the young unemployed persons are women. The Government indicates that women in Uganda constitute the majority of farmers and unpaid workers as they are responsible for most of the care economy. Only 12 per cent of women are in wage employment compared to the 25 per cent of economically active men (the male participation rate in wage sectors is more than three times that of women). The Committee notes that there is a sharp segregation of women into low-paying sectors such as agriculture; women in low-paying sectors receive at most half the average male wage. *Recalling the Committee's comments under the Equal Remuneration Convention, 1951 (No. 100), as to the occupation segregation of women and its contribution to the gender pay gap, the Committee invites the Government to provide information in its next report on Convention No. 122 on the efforts to improve job creation and increase labour market participation for women as a result of the measures adopted.*

*Informal economy.* The Committee notes that, according to the *Labour Market Information Bulletin*, 63.7 per cent of those who worked outside agriculture were working in the informal sector; in the case of the female workforce such ratio was equivalent to 67.2 per cent, while in the case of the male workforce it was equivalent to 61.1 per cent. Approximately 60 per cent of the urban workforce and 67 per cent of the rural workforce were working in the informal sector. *The Committee invites the Government to provide information in its next report on the efforts made to extend access to justice, property rights, labour rights and business rights to the informal economy workers and business (see 2010 General Survey concerning employment instruments, paragraph 697). It also invites the Government to indicate how the initiatives relating to micro-enterprises have contributed to improving the working conditions in the informal economy.*

*Article 3. Participation of the social partners.* The Committee recalls that the NEP was developed by a National Taskforce comprising ministry officials, representatives of the Federation of Uganda Employers, of the unions and of the Uganda Bureau of Statistics. Furthermore, the NEP stressed that the Government should take overall responsibility for its implementation with the participation of other actors, including the private sector, employers' and workers' organizations, development partners, as well as other stakeholders. The Ministry responsible for Labour was responsible for spearheading the implementation of the policy in collaboration with other ministries, social partners and agencies that play a key role in employment creation. *The Committee invites the Government to provide in its next report examples of the questions addressed or the decisions reached on employment policy through tripartite bodies. It would also appreciate to receive information on the involvement of the social partners in the implementation of the National Employment Policy.*

## Ukraine

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1968)**

*Implementation of an active employment policy. Measures taken in response to the crisis in collaboration with the social partners.* The Committee notes the Government's report received in September 2012 and the observations submitted by the Confederation of Free Trade Unions of Ukraine (KVPU). The Government indicates that during the implementation period of the Basic Lines of the State Employment Policy 2010–11, positive changes have been observed in the labour market in terms of employment and increased economic activity. It reports that the fall in unemployment has been facilitated by the implementation of active employment assistance programmes by the State Employment Service. At the beginning of 2009, there were almost 880,000 unemployed citizens registered with the State Employment Service and this number fell to 500,000 at the beginning of 2012; 763,000 unemployed persons were placed in jobs by the State Employment Service in 2011. The Committee understands that Ukraine had a strong economic recovery following the deep recession resulting from the 2008–09 global crisis. However, economic recovery appears to be slow in 2012. Measures have been taken to create a conducive business environment by simplifying the tax and customs codes. The Government also reports that the Act on the Employment of the Population, adopted in July 2012, includes mechanisms providing for the reduction of social contributions paid by employers when creating new jobs for older workers and other vulnerable categories of workers; free consultations on setting up and running a business; internship programmes offered to students and recent graduates; and education and training programmes. The Committee notes that the Act regulates the operations of commercial entities providing intermediary job placement services in Ukraine and abroad in line with the Private Employment Agencies Convention, 1997 (No. 181). The Ministry of Social Policy, in conjunction with the relevant central executive authorities and the social partners, has prepared draft Guidelines for the Implementation of the State Employment Policy up to 2014. The primary objectives are to create new highly paid jobs to increase the employment rate and to make it simpler for young specialists to enter the labour market. The Committee notes with *interest* the National Tripartite Accord on Employment and Jobs, based on the ILO Global Jobs Pact, concluded in June 2012 between representatives of the Government, and employers' and workers' representatives. It also notes with *interest* the third Decent Work Country Programme of Ukraine for the 2012–15 period which continues the cooperation between the ILO and Ukraine to promote decent work as a key to national development. ***The Committee invites the Government to provide in its next report information on the effectiveness and sustainability of the measures implemented in the framework of the State Employment Policy up to 2014 and the National Tripartite Accord on Employment and Jobs, in collaboration with the social partners. It also invites the Government to provide information in its next report on how the measures adopted have translated into the generation of productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers.***

*Coordination of education and training policies with employment policy.* The Government reports that it has identified that one of the most important factors in ensuring the provision of productive work and employment is targeted training, retraining and enhancing the qualifications of the workforce. In order to improve and further develop the system of workers' vocational development, the Act on the vocational development of workers was adopted in January 2012. The Government indicates that there is an observable trend in Ukraine for more vocational training of workers to be carried out as part of an in-house training system. In 2011, the number of workers who enhanced their qualifications at work rose by 3.6 per cent when compared to the previous year. ***The Committee invites the Government to include 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 half of all unemployed people who made use of employment services in 2011 were young people under the age of 35. In the first half of 2012, 527,000 people under the age of 35 made use of employment services and, of these, 36 per cent were placed in jobs with assistance from the State Employment Service. The Government reports that the Act on the Employment of the Population provides guarantees of placement in positions specially earmarked for young people looking for their first job. Up to 5 per cent of all positions at enterprises, institutions and organizations are established in this manner. In 2011, 8,000 positions were set aside for young people, and nearly 5,000 young people were placed; 7,700 positions have been designated for young people in 2012. The Committee notes other measures reported by the Government targeting the employment of young people, such as a programme where 3,000 young people were offered unemployment assistance to set up their own businesses in the first half of 2012, and a public works programme which employed 66,700 young people in the first half of 2012. The Committee notes the observations submitted by the KVPU indicating that young and older jobseekers have practically no chance to obtain employment as some job advertisements include an age requirement. ***The Committee invites the Government to provide in its next report information on the impact and sustainability of the measures taken to tackle youth unemployment and the other measures implemented to promote the long-term integration of young persons in the labour market.***

## United Kingdom

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Active employment policy. Consultation with the social partners.* The Committee notes the detailed information provided by the Government in August 2012 in response to the request made by the Conference Committee in June 2012. It also notes the observations provided by the Trade Union Congress (TUC), and the Government's response to these observations in October 2012. In reply to the 2011 observation, the Government reports that the number of people employed in the public sector was 5.9 million in March 2012, down 39,000 from December 2011, and the number of people employed in the private sector in March 2012 was 23.38 million, up 205,000 from December 2011. Since the Government announced its intention to reduce the deficit as a means to securing stronger growth, the amount of people in employment (aged 16–64) has risen from 28,862,000 in May 2010 to 29,354,000 in July 2012, which represent an increase in employment from 70.3 per cent to 70.7 per cent. Over the same period, unemployment has risen slightly from 7.9 per cent to 8.1 per cent. There were 9.29 million persons economically inactive and 1.6 million people were on Jobseeker's Allowance as at March 2012. The Government indicates that, as part of an active labour market policy, full use must be made of support offered by the State. Individuals claiming state benefits can expect increased help in overcoming barriers to work, finding and retaining a job. However, benefit payments will become increasingly conditional on the requirement to use this improved support and to look for employment. In this regard, the Committee notes that several regulations came into effect in April 2011 which created the legislative framework for the Mandatory Work Activity programme for Jobseeker's Allowance recipients. The Government indicates that Mandatory Work Activity gives extra support to a small number of Jobseeker's Allowance claimants who would benefit from a short period of activity. There are around 19,000 Mandatory Work Activity placements available per year, and Jobcentre Plus advisers have the flexibility to use the programme, where they feel it is appropriate, as part of a wider range of support options. Mandatory Work Activity placements last for four weeks and deliver a contribution to the local community. The TUC believes it is impossible to describe the Mandatory Work Activity programme as "freely chosen" as it is a compulsory work programme of 30 hours per week for four weeks for all benefit claimants of working age. It adds that the Government's equality impact assessment showed that Mandatory Work Activity is disproportionately likely to be applied to older, disabled and minority ethnic claimants. The TUC further indicates that Mandatory Work Activity is not supportive and there are more and more reports of abuse of the programme. The Government responded by indicating that the programme is only available to those claiming Jobseeker's Allowance, and not for all benefit claimants of working age. Mandatory Work Activity is a "work-related activity" that is designed to move participants closer to the labour market, not directly into employment. Official statistics from the early stages of the programme show that 29 per cent of claimants referred to Mandatory Work Activity between May 2011 and February 2012 were non-white and 21 per cent were claimants with disabilities. The Government indicates that claimants are referred to the programme on the basis of suitability for the scheme, regardless of ethnicity. It also adds that the figure with respect to persons with disabilities is not disproportionate compared to the Jobseeker's Allowance caseload. Furthermore, early findings from a survey of participants have found a positive impact on work attitudes, motivation to find work, and the majority of participants reported a good experience in the programme. The Committee notes that full findings will be published in December 2012. ***The Committee invites the Government to continue to provide information on the implementation of the Mandatory Work Activity programme and how this programme will translate into productive and lasting employment opportunities for its beneficiaries. It also invites the Government to specify in its next report how, pursuant to Article 2 of the Convention, it keeps under review the measures and policies adopted according to the results achieved in pursuit of the objectives of full, productive and freely chosen employment, specified in Article 1. It recalls that, in the terms of that Article, an active employment policy should be pursued "as a major goal". The Committee trusts that the Government will be able to report on further developments on how the social partners have been involved in the consultation procedures required by Article 3 of the Convention.***

*Role of employment services in employment promotion.* The Government indicates that staff in Jobcentre Plus, service providers, local authorities, further education colleges, training providers and employers are coming together in their communities to find new and innovative ways to support people back to work. It reports that it is modernizing the way Jobcentre Plus delivers its services and handing responsibility back to jobcentre plus advisers who work with claimants on a daily basis. Advisers are now able to offer claimants a comprehensive menu of help, including skills provision and job search support. They have the flexibility to decide which interventions will help claimants at the most appropriate point in their jobseeking journey, tailoring this to individual need. To support this new regime, the Government indicates that a single flexible support fund has been created worth approximately £118 million, which allows local resources to be aligned to the needs of the locality, to tackle local unemployment and multiple barriers to employment in a holistic and joined up way. The flexible support that Jobcentre Plus district managers are putting in place is bolstered by a number of Get Britain Working measures whose success depends on strong local partnerships and the active support of employers. The Committee also notes that the Government reported that it met with the TUC to discuss the design of the Get Britain Working programme. In particular, they discussed the potential impacts on employees, where employers are involved in hosting work experience placements for unemployed young people. The Government indicates that discussions have been constructive and are ongoing. ***The Committee invites the Government to continue to provide information on the contribution of the employment services in the implementation of active labour market measures.***

*Education and training policies.* The Government reports that National Skills Academies (NSAs), which are employer led, innovative, sector based education and training organizations, are designed to enable high levels of employer involvement and attract significant employer sponsorship and investment. The NSAs have a clear and distinct place in the skills system as delivery agents. Their role is to transform the supply of skills to meet employers' needs in defined sectors or areas of the economy by delivering specialist, high quality skills provision. The Government indicates that there are currently eighteen NSAs in operation and one NSA in development. ***The Committee invites the Government to provide in its next report information on the results achieved by NSAs in matching skills and labour market needs.***

*Youth employment.* The Government reports that youth unemployment dropped in July 2012, when compared to April 2012, to 22.2 per cent. It indicates that the Youth Contract was introduced in April 2012 to provide additional support, worth almost £1 billion, to young unemployed people over the next three years. The Youth Contract builds on existing support to provide young people with more intensive adviser support and work experience, as well as providing employers with wage incentives and apprenticeship incentives to encourage them to recruit young people. Furthermore, the Committee notes that the Scottish Government introduced in December 2011 the role of Minister for Youth Employment. The ministerial portfolio focuses on drawing together all the activities across Government to support youth employment. ***The Committee invites the Government to provide information on the impact of the measures taken to address youth unemployment and the results achieved in Scotland following the appointment of the Minister for Youth Employment.***

*Persons with disabilities.* The Government indicates that the Green Paper "Support and aspiration: A new approach to special educational needs and disability", published in March 2011, sets out proposals for a different system to support better life outcomes for young people with disabilities and those with special educational needs. These proposals include a single assessment process and education, health care plan focusing on outcomes that will follow the young person from birth to age 25, improvements to vocational and work-related learning, and improved opportunities to get and keep a job, including the introduction of supported internships for young people with disabilities. In addition, the Government's scheme for workers with disabilities, Access to Work, supported 35,840 people with disabilities to keep or get employment during 2010–11. Between April and December 2011, 27,420 people with disabilities were supported by the scheme. Access to Work provides additional support for individuals whose health or disability affects the way they do their job. It provides individuals and their employers with advice and support with extra costs which may arise because of an individual's needs. ***The Committee invites the Government to continue to provide information on the results of the implementation of the measures designed to address the needs of persons with disabilities in the open labour market.***

*Older workers.* The Committee notes that the Default Retirement Age (DRA) was removed from legislation. Employers can no longer force employees to retire when they reach the age of 65. Employers can only set retirement ages where it can be objectively justified in their particular circumstances – but this is open to challenge at Tribunal. The Government also indicates that Jobcentre Plus managers and advisers now have more flexibility to help older benefit claimants to find employment, and – apart from some specific options for jobseekers aged under 25 – older people have the same access to a comprehensive menu of individually tailored help. Furthermore, the Department for Work and Pensions is working in partnership with key business leaders in nine key occupational sectors to drive forward sustained improvements in the employment, training and retention of older workers. The Government indicates that it is still gathering information on the impact of these measures on older people's employment. ***The Committee invites the Government to provide information on the impact of these measures in terms of promoting the participation of older workers in the labour market.***

*Long-term unemployed.* The Committee notes that the Work Programme was launched on 10 June 2011 which has replaced much of the employment support previously offered. The Government indicates that providers will be paid primarily for supporting claimants into employment and helping them stay there for longer than ever before, with higher payments for supporting the hardest to help. Jobcentre Plus will continue to support benefit claimants during the first months of their claim. The Work Programme is for those people who are at risk of long-term unemployment. Any claimants who complete two years on the Work Programme without finding employment will return to Jobcentre Plus for further support. The Government indicates that the Department for Work and Pensions is currently running a small scale trial which will be evaluated to understand how best to support very long-term Jobseeker's Allowance claimants who may reach the end of the Work Programme from 2013. The trial was launched in November 2011 and will run for approximately nine months across Jobcentre Plus districts to test two new elements of support: Community Action Programme, a 26-week contracted employment programme; and Ongoing Case Management, a more intensive offer of Jobcentre Plus support and access to further resources. ***The Committee invites the Government to include in its next report information on the implementation of the Work Programme and the achievements in promoting the return of long-term unemployed persons to the labour market.***

## Uruguay

### ***Private Employment Agencies Convention, 1997 (No. 181) (ratification: 2004)***

*Protection of workers covered by the Convention.* With reference to its observation of 2010, the Committee notes the replies communicated in August 2012. The Government indicates that private employment agencies placed

3,442 persons in jobs in 2010 from a total of 41,643 jobseekers. *The Committee again invites the Government to send in its next report the text of any court decisions interpreting the national legislation concerning the rights of workers in relation to company decentralization (Act No. 18099 of 2007, as amended by Act No. 18251 of 2008) so as to be able to examine the manner in which protection is secured to workers covered by the Convention (Part IV of the report form). It also invites the Government to provide up-to-date information on the number of workers protected by the Convention, the number and nature of reported infringements, and any other relevant information concerning the application of the Convention in practice (Part V of the report form).*

*Regulation of private employment agencies. Controls and penalties.* The Government reiterates that the National Employment Directorate (DINAE) continues to administer the register of private employment agencies. DINAE coordinates with the general labour inspectorate in applying appropriate mechanisms and procedures in the event of any irregularities. The Committee notes that the draft decree implementing the Act which ratified Convention No. 181 is still being examined by the tripartite group on the application of international standards and has not yet been approved. *The Committee refers to its observation of 2010 and hopes that the Government will be in a position to announce, in its next report, that the implementing decree has been approved so as to ensure that DINAE can effectively supervise the operation of companies that supply labour and also regulate services that are still provided by “former employment agencies” (Article 3). The Committee hopes that the Government will be able to describe in its next report the operation of adequate machinery and procedures for the investigation of complaints, alleged abuses and fraudulent practices relating to the activities of private employment agencies (Article 10). The Committee reiterates that 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 reiterates that the categories of workers and types of services in respect of which exceptions are authorized have not yet been determined since the implementing decree has not yet been approved. *Should the exceptions provided for in Article 7(2) of the Convention be authorized, the Committee invites the Government to provide the relevant information and give the reasons for such authorization (Article 7(3)).*

*Migrant workers.* In reply to previous comments, the Government refers to Act No. 18250 of January 2008 concerning migration. *The Committee invites the Government to provide further information in its next report on the manner in which penalties are imposed on agencies covered by the Convention which engage in fraudulent practices or abuses (Article 8(1)). It 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 Government indicates that through the network of public employment centres (CePE) the profiles of applicants are sent to private employment agencies, the consent of the worker concerned being required in such cases. Agencies must send information on a quarterly basis. *The Committee invites the Government to send further information in its next report on the implementation in practice of cooperation between the public employment service and private employment agencies.*

## Bolivarian Republic of Venezuela

### Employment Policy Convention, 1964 (No. 122) (ratification: 1982)

*Implementation of the employment policy in the framework of a coordinated economic and social policy. Participation of the social partners.* With reference to the observation made in 2011, the Committee notes the indications provided in the Government's report. The Committee also notes the observations of the Independent Trade Union Alliance (ASI) on the application of the Convention and the Government's reply received in November 2012. The Government indicates that programmes and actions are being carried out through Social Missions for the inclusion of sectors excluded from the world of work. The Che Guevara Mission has the fundamental objective of the relation between education and work as a consubstantial element in the transformation process. Socio-political training is intended to strengthen the economic and democratic development model of popular participation based on solidarity, while technical and productive training is aimed at developing knowledge, aptitudes, skills, attitudes and values. The Madres del Barrio Mission is a comprehensive strategy to encourage the integration into the world of work of women in situations of extreme poverty. The aims of the Mission include facilitating social processes of socio-productive inclusion both for beneficiary mothers and for other members of the family. For that purpose, guidance is provided to mothers to help them formulate socio-productive proposals in Madres del Barrio committees. The Knowledge and Labour Mission is a training initiative which combines education and work, through which 1,002,537 individuals were included in various training initiatives as of March 2012. The ASI indicates that it is necessary to maximize the productive potential of the country by taking advantage of the increase in the potential supply of labour. In economic terms, the country is in a situation of stagnation, inflation, deindustrialization, with excessive monitoring and control of private economic activity. Labour policy is implemented separately from economic policy. Employment plans are not integrated into macroeconomic planning. *The Committee once again expresses interest in examining information on the impact of the measures adopted in the context of the Economic and Social Development Plan, 2007–13, in relation to the generation of productive, stable and high-quality employment (Article 1 of the Convention). The Committee also asks the*

**Government to provide specific examples of the manner in which the views of employers' and workers' organizations and of other persons affected have been taken into account in the formulation, implementation and review of employment policies and programmes (Article 3). The Committee hopes that the information provided in the next report will provide a basis for examining the manner in which persons who have participated in the social missions have obtained productive employment in the labour market.**

*Situation, level and trends of employment.* The Government included in its report data on the employment situation, level and trends. The Committee observes that in July 2012 the total activity rate rose to 64 per cent, the occupation rate was estimated at 92.1 per cent and the formality rate was 58.4 per cent. In July 2012, the estimated formality rate of 58.4 per cent was equivalent to an increase of 1.4 percentage points in relation to the data for July 2011. The ASI emphasizes that within the informal sector categories there was an increase in non-professional self-employed workers. Moreover, the Economic Commission for Latin America and the Caribbean (ECLAC), in its Economic Survey of Latin America and the Caribbean, 2010–11, observed an increase in the unemployment rate in 2010 in relation to the previous year, with a rise from 7.8 per cent to 8.6 per cent on average, with higher unemployment being recorded in each of the four quarters of the year compared with the same periods in 2009. The average unemployment rate in the first semester of 2011 and 2012 was estimated at 8.8 per cent. According to ECLAC, there was also a slight increase in employment informality, which rose from 44 per cent in 2009 to 44.5 per cent in 2010. **The Committee invites the Government to continue providing information on the situation, level and trends of employment, disaggregated by sex. It would also welcome information on the manner in which labour market data were used as a basis for regularly reviewing the employment policy measures adopted as an integral part of a coordinated economic and social policy with a view to achieving the objectives of the Convention (Article 2). The Committee reiterates its interest in examining information indicating the results of the measures adopted to facilitate a progressive transfer of workers from the informal to the formal economy.**

*Youth employment.* The Government refers in its report to a reform of the Employment Benefit Scheme Act, under which it would be a requirement for enterprises to include young people at the rate of 2.5 per cent of their workforce, both for employers in the public sector and for private sector enterprises. The ASI indicates that in August 2011 the National Statistical Institute reported a youth unemployment rate of 16.4 per cent. Nevertheless, the total number of young persons in difficulties in terms of poverty is reported to be 554,000, of whom 157,000 live in households where the income is no higher than the cost of the basic food basket. Young persons work in the commercial and services sectors, and many in retail, which are low productivity sectors with a tendency to generate employment under precarious conditions. **The Committee requests the Government to provide detailed information in its next report on youth employment trends, including statistics disaggregated by age and sex. The Committee invites the Government to include an assessment of the active policy measures implemented to minimize the impact of unemployment on young persons and to facilitate their lasting integration into the labour market, particularly in the case of the most underprivileged categories of young persons.**

*Development of small and medium-sized enterprises.* The Government indicates that the National Institute for the Development of Small and Medium-Sized Industry (INAPYMI) has initiated the operation of a Geographical Information System (SIG) with a view to registering the data of small and medium-sized industries and national social property units. **The Committee invites the Government to provide information in its next report on the impact of the measures adopted to promote productivity and a conducive climate for employment generation by small and medium-sized enterprises.**

## Zimbabwe

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1998)**

*Article 2 of the Convention. National policy on vocational rehabilitation and employment of persons with disabilities.* The Committee notes the Government's report received in August 2012 in reply to the 2010 observation. The Committee notes with **interest** that a consultative process led to the formulation of a draft policy on persons with disabilities, which is under consideration by stakeholders. Through the policy, the Government intends to mainstream and integrate issues pertaining to disability to ensure that vocational rehabilitation and employment of persons with disabilities is given due attention. The draft policy provides for strategic measures for creating an enabling environment for the promotion, advancement and social integration of persons with disabilities. Other measures envisaged include the provision of tools and financing for income-generating projects of persons with disabilities. The Government also indicates that the draft policy proposes joint planning, effective and efficient intersectoral and interministerial collaboration in order to, inter alia, collect data on persons with disabilities. It further indicates that it has yet to undertake the survey which had been proposed for 2010 on persons with disabilities. **The Committee invites the Government to provide in its next report information on the adoption of the national policy on persons with disabilities and details of the implementation of the vocational rehabilitation and employment component of this policy. The Committee would also welcome receiving statistics and relevant data, as much as possible, disaggregated by age, sex and nature of the disability, as well as extracts of reports, studies and inquiries concerning the matters covered by the Convention (Part V of the report form).**

*Article 3. Promotion of employment opportunities in the open labour market.* The Government indicates that the draft national policy on persons with disabilities provides for a quota system to enable people to access rehabilitative education and training for better employment prospects. The Government indicates that 41 students are enrolled in courses within the Danhiko Rehabilitation Centre on electronics, information technology, wood technology and clothing design. The centre has the capacity to enrol up to 80 students per year at various levels. ***The Committee invites the Government to include information on the implementation of the quota system and its impact on improving employment opportunities of persons with disabilities in the open labour market.***

*Article 4. Equal opportunity and treatment.* In reply to the Committee's comments, the Government indicates that there are no reported court cases or other relevant decisions on discrimination on the basis of disability. ***The Committee invites the Government to indicate any special positive measures aimed at effective equality of opportunity and treatment between persons with disabilities, whether women or men, and other workers.***

*Article 7. Vocational rehabilitation and employment services.* The Government indicates that existing employment services, including career guidance and counselling, are adapted to suit the needs of persons with disabilities. Information on career prospects is shared with students with disabilities on the choices they can make in their career paths. The Committee observes that emphasis is placed on the understanding that disability is not inability. ***The Committee invites the Government to provide information on the impact of measures taken to allow persons with disabilities to secure, retain and advance in employment.***

*Article 8. Access to services in rural areas and remote communities.* The Government indicates that the National Employment Service Department provides career guidance and counselling services in rural schools and will continue intensifying resource mobilization efforts to secure adequate resources needed for extensive coverage of rural schools. ***The Committee invites the Government to include in its next report information on how vocational rehabilitation and employment services are available to persons with disabilities in rural areas and remote communities.***

*Article 9. Suitably qualified staff.* The Government indicates that there are various training programmes for rehabilitation counsellors, staff members and instructors at the Danhiko Rehabilitation Centre. For example, the centre has trained nurses and physiotherapists. All experts at the centre undergo training in sign language and adaptive training methods in theory and practice. The centre also trains students with disabilities in order to meet their personal aspirations and employs some of them upon completion of their studies. ***The Committee requests the Government to provide information on the various training programmes for rehabilitation counsellors and other suitably qualified staff in the other rehabilitation centres.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 2** (Guyana); **Convention No. 88** (Bahamas, Djibouti, Tunisia); **Convention No. 96** (Plurinational State of Bolivia, Costa Rica, Egypt, Luxembourg, Malta, Senegal, Syrian Arab Republic); **Convention No. 122** (Azerbaijan, Belarus, Belgium, Plurinational State of Bolivia, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Croatia, Denmark, Denmark: Greenland, Dominican Republic, France: French Polynesia, Iraq, Lebanon, Papua New Guinea, Saint Vincent and the Grenadines, Suriname, Tajikistan, Turkey, United Kingdom: Guernsey, Uzbekistan, Yemen, Zambia); **Convention No. 159** (Burkina Faso, Malawi, Netherlands, San Marino, Slovakia, Thailand); **Convention No. 181** (Slovakia).





## Vocational guidance and training

### Brazil

#### **Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1992)**

*Definition. Policy to promote the granting of paid educational leave.* In reply to the comments that it has been making for many years, the Committee notes the detailed information on the *Bolsa de Qualificação Profissional* provided in a Government report received in November 2011. The Government indicates that, in accordance with the provisions adopted in November 1998 and August 2001, the *Bolsa Qualificação* consists of a benefit provided to workers who are temporarily unemployed in accordance with the provisions of collective agreements. The Committee observes that the Convention requires member States to formulate and apply a policy designed to promote, by methods appropriate to national conditions and practice, the granting of paid educational leave for the purpose of training, general, social and civic education, and trade union education. **The Committee invites the Government to provide detailed replies in its next report on the matters raised in the report form, with an indication in each case of the conditions that have to be met by workers to benefit from paid educational leave, the duration of such leave and the level of the financial benefits provided (Articles 2, 3 and 10 of the Convention).**

*Coordination of the policy to promote the granting of paid educational leave with general policies.* **The Committee invites the Government to indicate in its next report the measures adopted for the coordination of 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 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).**

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

#### **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 observation 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 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 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).*

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

## Zimbabwe

### **Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1998)**

*Granting paid educational leave.* The Committee notes the Government's report received in August 2012 in reply to the matters raised in its 2010 observation. In its previous comments, the Committee noted the concern expressed by the Zimbabwe Congress of Trade Unions (ZCTU) with respect to the lack of minimum standards regarding paid educational leave in the private sector, since the Labour Act had no relevant provisions on the subject. The Committee notes with *interest* that, pursuant to tripartite consultations, it was agreed to incorporate the principles enshrined in Convention No. 140 into the Labour Act through the inclusion of paid educational leave in the list of areas for collective bargaining under section 74(3) of the Labour Act. The Government also indicates that it has identified with the social partners the need to formulate a policy in line with the Convention. It is expected that consultations towards the formulation of the policy will commence in the near future. The Committee notes the examples provided by the Government on paid educational leave in the private sector. *The Committee invites the Government to include in its next report relevant information related to the formulation of a policy designed to promote the granting of paid educational leave in association with employers' and workers' organizations (Articles 2–6 of the Convention). It also invites the Government to include detailed information on effective tripartite consultations held to coordinate the national policy and their results (Article 4).*

*Article 7 of the Convention. Financial arrangements.* The Government indicates that the envisaged national policy on paid educational leave will provide for financial arrangements as well as for surveys to determine the amount of funds available for paid educational leave. *The Committee invites the Government to indicate in its next report the measures envisaged within the national policy to finance arrangements for paid educational leave.*

*Article 8. Discrimination.* The Government indicates that the envisaged national policy on paid educational leave will provide for measures to ensure that all workers have equal access to paid educational leave. *Referring to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee invites the Government to indicate in its next report the measures envisaged within the national policy to ensure that all workers have equal access to paid educational leave.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 140** (*San Marino*); **Convention No. 142** (*El Salvador, Guyana, Ireland*).

## Employment security

### Portugal

#### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1995)**

The Committee notes the Government's report received in October 2011 for the period ending May 2011, including replies to its 2006 observation. The Committee also notes the observations received in October 2011 from the General Workers' Union (UGT) and the General Confederation of Portuguese Workers – National Trade Unions (CGTP-IN). The Committee notes that new provisions regulating the termination of employment of public service employees were introduced in the framework of the 2008 legislative reform of the public sector with a view to align the civil service and private sector employment regimes. It also notes that a new Labour Code has been adopted by Act No. 7/2009 of 12 February 2009. Moreover, the 2009 amendments to the Code of Labour Procedure (Decree Law No. 480/99) introduced a new regulation of the judicial procedure applicable to claims for unfair dismissal. The Committee notes with *interest* that the provisions of the 2009 Labour Code have reinforced the grounds that constitute invalid reasons for termination. Section 381(d) of the Labour Code provides that the dismissal is invalid when the opinion of the Commission for Equality in Labour and Employment has not been sought before dismissing any pregnant worker, any worker who has recently given birth or who is breastfeeding, or any worker during initial parental leave (*Article 5 of the Convention*). The Committee observes the CGTP-IN's indication that the Constitutional Court decision No. 338/2010 of September 2010 declared section 356(1) of the 2009 Labour Code (which provided that giving evidence during the procedure of dismissal was discretionary) as unconstitutional, on the grounds of violating the principles of the right to defence and protection of employment security enshrined in the National Constitution. The Committee notes that in the context of structural adjustment measures adopted since March 2011, the Government undertook reforms in the employment protection system, including amendments to the regulation of individual dismissals and the reduction of severance payments. **The Committee invites the Government to include in its next report an evaluation of the impact of the reduction of termination benefits by the legislative reforms of 2011 in terms of maintaining and creating employment. In this respect, the Committee invites the Government to provide updated information on the intervention of the labour authorities in cases of collective dismissals (Part V of the report form).** The Government indicates that following the monitoring activities of the Working Conditions Authority, 178 infringements of the requirements for collective dismissals were sanctioned in 2010, which involved 8,223 workers in 98 businesses. In the same year, 197 infringements regarding dismissal for the abolition of the job position were sanctioned, which involved 4,065 workers in 162 businesses. **The Committee invites the Government to continue to provide information on the activities of the Working Conditions Authority and the labour inspectorate on the matters covered by the Convention.**

*Article 2(3) of the Convention. Adequate safeguards in case of recourse to contracts of employment for a specified period.* In reply to previous comments, the Government supplied statistical information on the rate of fixed-term employment contracts concluded between 2006 and 2009 (around 29 per cent in 2009, approximately 830,000 contracts). The CGTP-IN indicates that the 2009 Labour Code has expanded the cases in which a fixed-term employment contract may be stipulated, such as through providing the possibility of very short-term contracts for seasonal agricultural activities and touristic events (section 142 of the 2009 Labour Code). The Government indicates that, according to the 2009 Labour Code, fixed-term employment contracts may be renewed up to three times and their total duration may not exceed three years (section 148 of the Labour Code). Section 393 of the 2009 Labour Code provides that where the dismissal of a worker employed under a fixed-term contract is declared invalid, the employer shall be condemned to reinstate the worker (if the contract expires after a definitive court decision) and compensate her/him for patrimonial and non-patrimonial damages. **The Committee invites the Government to provide information on the manner in which the protection provided by the Convention is concretely ensured to workers who have concluded an employment contract for a specified period and the number of workers affected by these measures. Please provide copies of court decisions by which tribunals have dealt with this issue.**

*Article 2(5). Micro-enterprises.* In reply to the Committee's previous comments, the Government indicates that the procedure for dismissal in micro-enterprises is regulated by the same provisions applicable to other enterprises except for the intervention of work councils in the procedure of dismissal (section 358 of the 2009 Labour Code). The Committee notes that as a general rule, the 2009 Labour Code provides that when termination is unjustified, the court shall automatically order the reinstatement of the worker. It is then up to the worker who may opt for compensation in lieu of reinstatement (sections 389(1) and 391 of the Labour Code). As an exception to this rule, where the dismissal concerns workers in micro-enterprises or workers holding managerial positions, the employer may request the court to exclude reinstatement of those workers based on circumstances, which would render the worker's return seriously prejudicial and disruptive to the enterprise's functioning. When reinstatement is excluded, the worker has the right to compensation (section 392 of the 2009 Labour Code). **The Committee invites the Government to continue to provide information on the application of the Convention to micro-enterprises.**

*Article 8. Time limit for the appeal procedure.* The CGTP-IN indicates that the time limit under the 2009 Labour Code for bringing a claim for unfair dismissal before the court, i.e. 60 days compared to one year before the 2009 reform, is too short as it does not allow workers to submit the dispute to labour mediation. The CGTP-IN also indicates that the

amendments to the Code of Labour Procedure make dismissal less expensive because the State is responsible for paying interim wages whenever the legal procedure lasts for more than a year (section 98-N of the Code of Labour Procedure). In the CGTP-IN's view, this measure is likely to promote dismissals, removing any reservation the employer might have against being involved in a lawsuit. ***The Committee requests the Government to provide information on the practical application of the provisions of the Code of Labour Procedure regulating claims for unfair dismissal. It also requests the Government to include updated information on the outcome of appeals against unjustified termination, the average time for an appeal to be decided and the roles of mediation and arbitration in resolving issues related to the Convention.***

***Burden of proof.*** The UGT indicates that under the 2009 Labour Code, the worker's guarantees in the judicial procedure were strengthened to the extent that the worker may challenge dismissal through filing an application and submitting it to court. The employer has to prove that the termination was lawful (section 387(2) of the 2009 Labour Code and sections 98-C and 98-D of the Code of Labour Procedure). The Committee also notes that according to section 387(4) of the 2009 Labour Code, the court shall decide on the existence of valid reasons for dismissal alleged by the employer. ***The Committee requests the Government to provide information on the effect given to Article 8(3) of the Convention.***

***Article 10. Compensation.*** In the CGTP-IN's view, the relaxed procedural requirements introduced by the 2009 Labour Code and the decrease in sanctions for these requirements, are likely to undermine the guarantee of employment security. The CGTP-IN further indicates that the 2009 Labour Code introduced changes regarding the effects of unlawful dismissal to the extent that dismissals are declared invalid only when the irregularities are not purely procedural. Accordingly, compensation for dismissed workers was reduced. Pursuant to section 389(2) of the 2009 Labour Code, when the court decides that there are valid reasons for dismissal but finds procedural irregularities, the dismissed worker shall only have the right to half the compensation in lieu of reinstatement she/he would have in the case of unjust dismissal. ***Taking into account the concerns raised by the CGTP-IN, the Committee invites the Government to continue to provide information on this issue.***

*[The Government is asked to reply in detail to the present comments in 2014.]*

## Spain

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1985)**

In relation with the observation formulated in 2011, the Committee notes the remarks submitted by the Trade Union Confederation of Workers' Committees (CC.OO.) and the trade union confederation General Union of Workers (UGT) in August 2012 on the application of the Convention. It further notes the Government's response to these remarks in September and November 2012. The Committee notes that, at its 316th Session (November 2012), the Governing Body declared receivable a representation alleging non-observance by Spain of Convention No. 158, which the trade union confederations submitted under article 24 of the ILO Constitution. The Committee will therefore continue its examination under article 22 of the ILO Constitution when the proceedings before the Governing Body are closed.

## Sweden

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1983)**

The Committee notes the Government's detailed report provided for the period ending in June 2011 including complete information in relation to the 2007 observation. Among the legislative amendments made to the Employment Protection Act which entered into force in 2007 and 2008, the Committee notes that a general fixed-term contract becomes a contract for an indefinite period of time when a worker has been employed with the same employer for a total period of two years over a five-year period. Likewise, a fixed-term contract of a worker who has been employed by the same employer as a replacement for a total period of two years (previously three years) also becomes a contract for an indefinite period of time. The Committee further notes the Government's statement that most workers in the Swedish labour market have contracts for an indefinite period of time. The Government further indicates that employment contracts for an indefinite period of time will continue to be the main foundation of the labour market and that fixed-term contracts fulfil the important function of enabling employers to meet temporary needs to increase the available manpower and to replace those temporarily absent. Fixed-term contracts can constitute an important passage into working life for young people and for those without or with limited work experience. Other measures taken by the Government to increase the protection resulting from the Convention include a new provision in the Employment Protection Act to provide that if fixed-term contracts or contracts for probation pursuant to the Employment Protection Act are abused, the workers concerned would be entitled to obtain a judicial declaration that the employment contract is valid for an indefinite period of time (*Article 2(2) and (3) of the Convention*). The Committee also notes the data provided by the Government on the activities of the Labour Court and the Discrimination Ombudsman. ***The Committee invites the Government to continue providing relevant information on the manner in which the provisions of the Convention are applied in practice, including extracts of relevant judicial decisions involving questions regarding the application of the Convention, available statistics on the activities of the Labour Courts and the Discrimination Ombudsman and on the number of terminations for economic or similar reasons in the country (Parts IV and V of the report form).***

## Turkey

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1995)**

The Committee notes the Government's report received in November 2011 in reply to its previous comments. It also notes the various relevant decisions of the Ninth Chamber of the Court of Cassation supplied by the Government on the matters covered by the Convention. The Committee further notes the observations of the Confederation of Turkish Trade Unions (TÜRK-İS) and the Turkish Confederation of Employers' Associations (TİSK) on the application of the Convention. The Committee notes that the new Code of Obligations (Act No. 6098 dated 11 January 2011) entered into force in July 2012. ***The Committee invites the Government to provide information on the application of the new provisions of the Code of Obligations on the matters covered by the Convention. It would welcome continuing to receive the remarks of the Government and the social partners on the application of the Convention in practice and examples of court rulings concerning questions of principle related to the Convention (Part V of the report form).***

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO).* In reply to the Committee's previous comments, the Government indicates that Maritime Labour Law No. 854 has not been amended to cover employment protection of seafarers. The Committee recalls that in its conclusions adopted in November 2000, the tripartite committee set up by the Governing Body to examine a representation under article 24 of the ILO Constitution noted that the laws regulating the employment of seafarers did not require a valid reason related to capacity, conduct or operational requirements for termination. ***The Committee urges the Government again to take the necessary steps to ensure that seafarers are afforded the protection under the Convention and to provide information on the measures 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.* In its previous comments, the Committee noted the safeguards provided in Labour Law No. 4857 against the abuse of different types of contracts. The Committee notes TİSK's indication that the Labour Law attaches extremely harsh conditions to the use of employment contracts for a specified period of time. Moreover, the Court of Cassation strictly applies the provisions of the Labour Law regulating these contracts. Accordingly, even if there is an objective reason for stipulating a fixed-term contract, the Court does not hold that the contract is stipulated for a specified period of time if the date of termination of such contract is not clear. The party claiming that the employment contract has been stipulated for a specific period of time has the burden to prove this circumstance. The Committee notes TÜRK-İS's concern that especially for auxiliary jobs some employers tend to stipulate contracts for a specified period of time with the aim of avoiding employment protection provisions. ***The Committee invites the Government to continue to provide examples of court decisions on the safeguards provided in the Labour Law against recourse to contracts for a specified period.***

*Article 2(4)–(6). Categories of employees excluded from the Convention.* The Committee recalls that under section 18 of the Labour Law, employees in businesses employing less than 30 workers, employees with less than six months' employment and employees holding a managerial position are excluded from the employment protection provisions of the Law – i.e. in terminating employees the employer does not have to depend on a valid reason. Under section 17 of the Labour Law, if the contracts of these categories of workers are terminated in bad faith, they are entitled to compensation equal to three times the notice period plus the compensation in lieu of notice if the notice period has not been respected. The Committee notes TÜRK-İS's indication that, as a positive and important development, a decision of the Court of Cassation of 26 May 2005 stated that although section 18 of the Labour Law establishes the limit of 30 employees, if the number of workers in an establishment is less than 30, the collective agreement in an establishment may provide that employment protection provisions are applicable regardless of the number of employees. The aforementioned decision has been confirmed by subsequent jurisprudence. The Committee further notes TİSK's indication that certain grounds listed under the Convention, such as filing a complaint against the employer (*Article 5(c)*), are also applicable to employees that are excluded from the employment protection provisions of the Labour Law, to the extent that these grounds are accepted by the courts as being in "bad faith", thereby rendering the worker entitled to compensation. ***The Committee invites the Government to continue to provide information on any developments in law and practice concerning the categories of workers excluded from the employment protection provisions of the Labour Law. It also invites the Government to include in its next report information on the impact of the decisions of the Court of Cassation on the application of the Convention.***

*Article 10. Remedies in case of invalid termination.* In its previous comments, the Committee noted that the Turkish Employment Agency (İŞKUR) required workers who win their lawsuits for unfair dismissal to pay back the unemployment benefits they received during adjudication. The Committee notes TİSK's concern that a worker whose proceedings lasted for more than four months who received four months' wages pursuant to section 21 of the Labour Law would be financially disadvantaged if required to pay back the unemployment benefits paid for the period exceeding four months. In this regard, the Committee notes with ***interest*** the decision of the Court of Cassation of 5 April 2010 stating that when an appeal procedure for unfair dismissal lasts more than four months, the repayment by the worker winning the lawsuit of unemployment benefits received during adjudication is unlawful as it contravenes the Unemployment Insurance Law No. 4447 and the principles of social security. ***The Committee invites the Government to continue to provide information on the application of Article 10 of the Convention.***

*[The Government is asked to reply in detail to the present comments in 2014.]*

## **Direct requests**

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 158** (*Democratic Republic of the Congo, Lesotho, Luxembourg, Montenegro, Saint Lucia, Slovakia, Slovenia, The former Yugoslav Republic of Macedonia, Uganda, Ukraine, Yemen*).

## Wages

### Austria

#### **Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1953)**

*Article 3(4) of the Convention. Differentiated minimum wage rates based on age.* The Committee notes the comments made by the Federal Chamber of Labour (BAK) according to which pay practices consisting in paying lower wages to employees under 18 years of age than those paid to adult employees constitute inadmissible discrimination on grounds of age. The BAK refers to a number of judicial decisions which have confirmed that wage differentials based on age are discriminatory and considers that the debate which goes to the very heart of equality of treatment in employment and occupation is still topical. The BAK also criticizes the Government's view that minors can only be employed in certain activities and should therefore be paid less, arguing that protective legislation, such as the Federal Minor and Young Worker Employment Act, cannot offer any justification for differentiated remuneration on grounds of age. In this connection, the Committee wishes to recall paragraphs 169–176 of its 1992 General Survey on minimum wages in which it pointed out that the quantity and quality of work carried out should be the decisive factors in determining the wage paid and that the reasons that may have prompted the adoption of lower minimum wage rates for groups of workers on account of their age should be regularly re-examined in the light of the principle of equal remuneration for work of equal value. ***The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the BAK and also to provide copies of any recent judicial decisions on this matter.***

### Plurinational State of Bolivia

#### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1977)**

*Article 1(2) and (3) of the Convention. Scope of application.* The Committee recalls its previous comment in which it requested the Government for clarifications on the extension of the coverage of the national minimum wage to agricultural workers. The Committee notes, in this respect, the Government's reference to Act No. 3274 of 9 December 2005, concerning salaried work in Brazilian nut plantations, in particular, section 8 which provides that remuneration may in no case be inferior to the national minimum wage rate. It is still unclear, however, whether rubber and forestry workers remain excluded from minimum wage coverage. ***The Committee therefore requests the Government to provide additional explanations in this respect.***

*Article 3. Criteria for determining the minimum wage level.* The Committee notes the adoption of Supreme Decree No. 1213 of 1 May 2012, which raised the national minimum wage from 815 to 1,000 bolivianos (approximately US\$144) per month, that is a 22.7 per cent increase compared to 2011. The Committee also notes the Government's indication that the minimum wage is adjusted annually by reference to the inflation rate and that it currently corresponds to twice the amount representing the extreme poverty line (approximately US\$1.25 per day). The Committee understands, however, that despite recent increases of the minimum wage, the erosion of the purchasing power of the minimum wage due to rising basic commodity prices does not permit low-paid workers to cover their subsistence needs in terms of essential consumer goods, housing, health, clothing, or hygiene. The Committee notes, for instance, that the UN Committee on Economic, Social and Cultural Rights expressed concern about the fact that the minimum wage continued to be insufficient to provide workers and their families with a decent standard of living (see UN Doc. E/C.12/BOL/CO/2 of 8 August 2008, paragraphs 14 and 27). ***The Committee accordingly requests the Government to provide more detailed information on the manner in which the subsistence needs of workers and their families are calculated, including for instance the collection of labour statistics or the compilation of data for defining the basket of basic consumer goods, and the bodies or agencies responsible for conducting the relevant surveys and studies.***

*Article 4(2) and (3). Full consultation with, and direct participation of, the social partners.* For a number of years, the Committee has been drawing the Government's attention to the need to ensure genuine and effective consultations with the most representative employers' and workers' organizations in all matters related to minimum wage fixing. The Committee notes the Government's explanations concerning the annual readjustment of the national minimum wage rate by means of supreme decrees but observes that no progress has been made with respect to tripartite consultations which is one of the essential obligations of the Convention. ***The Committee accordingly urges the Government to take prompt action towards ensuring full consultation with the most representative employers' and workers' organizations and their direct participation in the operation of the minimum wage fixing machinery. The Committee also requests the Government to keep the Office informed of any progress made concerning the establishment of the National Council on Labour Relations to which reference was made in the Government's previous report.***

*Article 5. Adequate inspection.* Further to its previous comment regarding the possible amendment of section 121 of the General Labour Act so as to provide for truly dissuasive fines in case of non-compliance with the minimum wage legislation, the Committee understands that no real progress has been made. The Committee also understands that

difficulties are experienced with the enforcement of the minimum wage legislation, in particular, in the Chaco region. It notes, in this regard, the recommendations of the multi-agency mission of the United Nations Permanent Forum on Indigenous Issues, following its 2009 visit regarding the need to carry out adequate and timely labour inspections within the Chaco region and ensuring that indigenous workers are not paid less than the minimum wage (see UN Doc. E/C.19/2010/6, paragraphs 35 and 40). *The Committee accordingly requests the Government to indicate the measures taken or envisaged in order to: (i) ensure that the labour legislation provides for appropriate sanctions against the infringement of minimum wages; and (ii) reinforce the labour inspection services so as to effectively prevent such infringements, especially with regard to indigenous workers.*

## Brazil

### **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 notes that the Government's report provides detailed information on the legislation governing the conditions of employment of federal public servants, which are not really relevant to the scope and purpose of this Convention. The Committee recalls that the primary objective of the Convention is to guarantee appropriate levels of wages and decent working conditions for workers employed for the execution of public contracts, that is to say contracts concluded by a government authority and involving the expenditure of public funds. The Convention therefore requires that labour clauses be included in public contracts in order to ensure that the workers concerned enjoy wages and other working conditions not less favourable than those established by law, collective agreement or arbitration award for work of the same nature in the same district. As explained in the Practical Guide prepared by the Office in 2008 (page 17), Convention No. 94 is about procurement contracts in the public sector, not about the employment contracts of public employees. The Committee recalls that it has been drawing the Government's attention to the main requirements of the Convention for more than a decade and has been suggesting measures to supplement the public procurement legislation, especially section 44 of Act No. 8666 of 1993 and Normative Instruction No. 8 of 1994. *The Committee accordingly urges the Government to take action in order to bring its legislation into full conformity with the requirements of the Convention.*

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

## Bulgaria

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1955)

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous comments, the Committee notes the information contained in the Government's report concerning the latest amendments to the Public Procurement Act and implementing Regulations and Ordinances, especially as regards the appeals procedure and the grounds of nullity of public procurement contracts. It also notes the Government's explanations concerning the assistance to tenderers provided by the Public Procurement Agency (PPA), including through direct consultations, written replies to individual requests, hot phone lines and electronic services.

The Committee observes, however, that the Government's report does not contain any references to legislative or administrative measures implementing the specific requirements of the Convention, the only relevant provision in the current legislation being section 56(1)(11) of the Public Procurement Act which requires tenderers to declare when bidding that they have taken into consideration the minimum labour cost requirements. The Committee further notes that the standardized public procurement contract available on PPA's website does not contain any clauses concerning the terms of employment and working conditions of workers engaged in the execution of public contracts.

The Committee therefore *regrets* that the Government has still not taken any steps to give effect to the basic requirements of the Convention, namely: (i) the insertion in all public contracts falling within the scope of *Article 1* of the Convention of labour clauses – drafted after consultation with employers' and workers' organizations – ensuring to the workers concerned wages and other working conditions not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations; (ii) the notification of the terms of the clauses, by advertising specifications or otherwise; (iii) the posting of notices in conspicuous places at the workplace with a view to informing the workers of their conditions of work; and (iv) the effective enforcement through a system of inspection and adequate sanctions, including the withholding of contracts and the withholding of payments, for failure to observe and apply the provisions of labour clauses.

In this connection, the Committee wishes once more to refer to its General Survey of 2008 concerning labour clauses in public contracts, in which it indicated that the idea behind the adoption of minimum labour standards in the field of public procurement is that public authorities should concern themselves with the working conditions under which the operations in question are carried out. The concern stems from the fact that government contracts are usually awarded to the lowest bidder and that contractors may be tempted, in view of the competition involved, to economize on labour costs. The Committee also indicated that the insertion of appropriate labour clauses has the effect of setting as minimum



conditions for the contract standards that are already established within the locality, and that labour costs are thus removed from competition between bidders (paragraphs 2 and 40). While recognizing the Government's efforts in promoting conditions of fair competition and transparency in public procurement operations, the Committee stresses that, under this Convention, the Government is also under the obligation to ensure that 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, which implies that local standards higher than those of general application should be applied, where they exist. ***The Committee again urges the Government to take without further delay all necessary action in order to give full effect to the Convention and to keep the Office informed of any progress made in this regard.***

## Burundi

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)**

*Article 3 of the Convention. Minimum wage fixing machinery.* The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), dated 30 August 2012, concerning the application of the Convention. COSYBU considers that the Convention is a dead letter as the interoccupational guaranteed minimum wage (SMIG) has not been revised since the 1980s. COSYBU indicates that it is regrettable and scandalous to continue to have the SMIG officially fixed at 160 Burundian francs (approximately US\$0.10) per day in urban centres and at 105 Burundian francs (approximately US\$0.07) per day in rural areas and asks the Government to readjust the SMIG level as a matter of urgency. In this connection, the Committee recalls the Government's indications in earlier reports that the readjustment of the national minimum wage is part of the broader revision process of the Labour Code and also conditional on the preparation of a preliminary study in this matter. Under these circumstances, the Committee is obliged to conclude that the minimum wage fixing process provided for in sections 74 (Ministerial ordinances fixing minimum wages ensuring fair remuneration to workers) and 249 (annual revision of the minimum wages by the tripartite National Labour Council) of the Labour Code is no longer implemented in practice. ***The Committee requests the Government to transmit any comments it may wish to make in response to the observations of COSYBU. The Committee also asks the Government to take all necessary measures in order to reactivate the minimum wage fixing process in full consultation with the social partners and proceed to the long overdue readjustment of the interoccupational guaranteed minimum wage.***

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (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 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous observation, the Committee notes the adoption of Act No. 1/01 of 4 February 2008 concerning the Code on Public Procurement. The new public procurement legislation regulates the award, execution and supervision of all public contracts on the basis of equality of treatment and transparency. It also establishes two organs, the National Directorate for oversight of public procurement operations (DNCMP) and the Regulatory Authority of public procurement (ARMP) which are responsible for ensuring compliance with laws and regulations in respect of public contracting. The Committee notes, however, that the Code on Public Procurement does not provide for the insertion of labour clauses as prescribed by this Article of the Convention. In fact, the only provision which appears to address labour matters in relation to the public procurement process is section 55(1)(a) of the Code which excludes from public tendering persons who have not been regular in the payment of taxes, contributions and other dues of all kinds and who cannot produce a certificate of the administrative authority concerned showing compliance with those obligations. The Committee refers, in this respect, to paragraphs 117–118 of the General Survey of 2008 on labour clauses in public contracts in which it pointed out that the Convention does not relate to some general eligibility criteria of individuals or enterprises bidding for public contracts but requires a labour clause to be expressly included in the actual contract that is finally signed by the procuring entity and the selected contractor. Similarly, certification may offer some proof about tenderers' past performance including respect for social obligations but carries no binding commitment with regard to prospective operations as labour clauses do. ***Noting that the Government in its last report had announced its intention to take appropriate action in order to bring its legislation into full conformity with the Convention, the Committee hopes that the necessary steps will be taken without further delay. Noting also that Decree No. 100/120 of 18 August 1990 on general conditions of contract will cease to apply upon the entry into force of the new Code on Public Procurement, the Committee requests the Government to transmit the text of the new general conditions of contract once they have been adopted. Moreover, the Committee requests the Government to clarify whether Presidential Decree No. 100/49 of 11 July 1986 on specific measures to guarantee minimum conditions to workers employed by a public contractor – which reproduces in essence the provisions of Article 2 of the Convention without, however, referring expressly to labour clauses – is still in force and, if so, how the application of section 2 of that Decree is ensured in practice.***

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

## Cameroon

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1962)

*Article 2 of the Convention. Inspection of labour clauses in public contracts.* The Committee refers to its previous comments and observes that the Government provides no fresh information other than that a new Government Procurement Ministry has been established to be responsible for updating procurement legislation, and, in particular, for drawing up a new Public Procurement Code to replace the present one, adopted in 2004.

Recalling that the Government in the report submitted in 2009 stated that validation of the preliminary draft of the Public Procurement Code was under way, the Committee points out that the provisions of the new code must prescribe that labour clauses must be included as an integral part of public contracts to ensure that workers employed in enterprises performing public contracts enjoy the same working conditions as those established for work of the same character in the trade or industry concerned in the district where the work is carried on. Furthermore, the terms of the clauses and any variations thereof must be determined by the competent national authority after consultation with the organizations of employers and workers concerned, in accordance with *Article 2(3)* of the Convention. The Committee wishes to point out, in this connection, that not only must public contracts include labour clauses (*Article 2*), but the legislation must require the posting of notices in conspicuous places at workplaces in order to inform the workers of their conditions of work (*Article 4(a)(iii)*) and prescribe adequate sanctions either by the withholding of contracts or by the withholding of payments due under the contract (*Article 5*). **Accordingly, the Committee asks the Government without further delay to take the necessary steps – either in the course of revising the Public Procurement Code or through administrative measures taken by the Public Procurement Regulation Agency (ARMP) – to ensure the inclusion in all public contracts to which the Convention applies of labour clauses ensuring that workers employed in the performance of such contracts have wages and other conditions of labour which are at least as favourable as the best minimum standards established in the same district by collective agreement, arbitration award or national laws or regulations for work of the same character carried on in the same branch of activity, as required by Article 2 of the Convention. It also requests the Government to keep the Office informed of any progress in the revision of the 2004 Public Procurement Code and to send a copy of the new text as soon as it has been adopted.**

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 8(1) of the Convention. Deductions from wages.* In its previous comments, the Committee took note of the observations of 9 September 2011 by the General Union of Workers of Cameroon (UGTC) and those of 20 October 2011 by the Cameroon Trade Union Congress (CTUC). These organizations allege irregularities in the wage deductions made by the National Social Insurance Fund (CNPS) and failure to involve the National Consultative Labour Commission. The Committee notes that the Government's latest report contains no fresh information in response to the comments by the two organizations and makes no further reference to the process of revision to bring section 75 of the Labour Code into line with this Article of the Convention. **While stressing that social dialogue is of fundamental importance in the implementation of the provisions of international labour Conventions, the Committee points out that ultimate responsibility for alignment of the legislation with the Convention lies with the Government. It again asks the Government to send all relevant information on the measures taken to bring the legislation into line with the Convention on this point. Furthermore, it requests the Government to send to the Office copies of any draft amendments to section 75(1) of the Labour Code, reportedly submitted for examination to the National Consultative Labour Commission.**

*Article 12(1). Payment of wages at regular intervals.* The Committee notes that in response to its previous comments, the Government states that the wage arrears due to former employees of privatized state enterprises are being paid as cases are dealt with, as agreed with the social partners, and according to budget availability. With regard to numerical data, the Government indicates that these will be sent to the Office at a later date as soon as they become available. The Committee understands that there are still difficulties in paying public sector wages on a regular basis, for example some contractual staff in the public service have received no pay for about two years. **The Committee again asks the Government to provide detailed information on the problems of wage arrears that the Committee has raised in its comments since 2008, particularly with regard to the public sector, including the total amount of wage arrears, the operation of the special commission set up to calculate and settle the wage entitlements and arrears of former employees of state and semi-public enterprises, and any other measures taken or envisaged with a view to settling all outstanding payments and preventing the recurrence of similar problems in the future.**

*[The Government is asked to reply in detail to the present comments in 2013.]*

## 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.**

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

## Costa Rica

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 3 of the Convention. Payment of wages in legal tender.* Further to its previous comments, the Committee notes the Government's intention to adopt, with the technical assistance of the Office, measures to align section 165 of the Labour Code with the provisions of the Convention. The Committee once again recalls the importance of compliance with *Article 3* of the Convention, under the terms of which wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited. It also recalls that the problem of the non-conformity of section 165 of the Labour Code with this provision of the Convention has been the subject of the Committee's comments for many years and was even emphasized in its 2003 General Survey on the protection of wages (paragraph 80). **The Committee therefore hopes that the Government will forthwith take the necessary measures to ensure the implementation of the Convention on this point, if necessary with the technical assistance of the Office, and it requests the Government to keep the Office informed of any developments in this respect.**

*Article 4(2)(b). Value attributed to allowances in kind.* The Committee notes that the Government's latest report, in the same way as the previous report, focuses almost solely on the criteria under which the allowances provided may be qualified as wages in kind. On the precise issue raised by the application of *Article 4(2)(b)* of the Convention, the Government confines itself to indicating that, in the last resort and in case of doubt, it is for the courts to determine the value of in-kind benefits and that courts cannot take arbitrary decisions.

The Committee, however, observes that section 166 of the Labour Code still establishes as a rule that the value of allowances in kind shall be fixed at a flat rate of 50 per cent of the wage in cash if no other amount has been determined by agreement between the parties. The Committee recalls the requirement of the Convention that the value attributed to allowances in kind shall in all circumstances be fair and reasonable. In this regard, the flat-rate valuation envisaged in section 166 of the Labour Code in the absence of agreement between the parties is not such as to ensure that the value attributed corresponds in practice to the real value of the allowances. As the Government indicates, intervention by a court is only envisaged in cases of doubt and then only following a complaint lodged with the competent bodies (which is often a long and costly procedure). This procedure does not therefore provide for full compliance with this provision of the Convention.

The Committee is therefore bound to recall, as it emphasized in paragraph 159 of its 2003 General Survey on the protection of wages, that "setting an overall limit on the proportion of the money wages which may be replaced by benefits in kind does not in itself resolve the problem of the fair valuation of such benefits and offers little protection to workers from possible exploitative practices". **In light of the above, the Committee hopes that the Government will take the necessary measures in the very near future to amend section 166 of the Labour Code so as to ensure that it is in conformity with the Convention, if necessary with the technical assistance of the Office, and requests it to provide information on any developments in this respect.**

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1979)**

*Articles 3 and 5 of the Convention. Criteria for determining minimum wage levels – Adequate inspection.* The Committee notes the Government's reply to the comments made by the Confederation of Workers Rerum Novarum (CTRN) alleging inadequate monitoring of compliance with minimum wage legislation due to the limited number of labour inspectors and also emphasizing the need to bring up to date the structure and value of the family basket of goods (both urban and rural) and to strengthen the National Wages Council.

In its response, the Government indicates that major efforts have been made in the last five years for increasing the staffing of the National Inspection Directorate (DNI). The Government also refers to the National Minimum Wages Campaign launched in 2010 with a view to reinforcing the supervision of minimum wage legislation. The Government states that ensuring compliance with minimum wage rates in force has become a national priority and is part of a national strategy for the eradication of extreme poverty. According to the statistical results obtained during the first year of the National Minimum Wages Campaign, from 1 August 2010 to 31 August 2011, 9,770 establishments were inspected, of which 4,161, or 42.6 per cent, were found in breach of the applicable minimum wage legislation. Most of the cases of non-compliance, i.e. 41 per cent, were observed in commerce and agriculture.

*While noting these explanations which tend to confirm CTRN's concern about a significant part of the active population receiving wages inferior to the applicable minimum wage, the Committee asks the Government to take all appropriate measures to ensure the effective application of the national legislation relating to minimum wages, including the employment of a sufficient number of adequately trained inspectors and the imposition of truly dissuasive penalties for infringement of the provisions relating to minimum wages.*

*The Committee also requests the Government to submit its observations with respect to other issues raised by CTRN, including the determination of the "family basket of goods" indicator, and the methodology used by the National Wages Council for the annual readjustment of the minimum wage.*

*Finally, the Committee would appreciate receiving the Government's response to the point raised in an earlier comment concerning the application of Article 2(1) of the Convention (young workers remunerated at a rate of between 50 and 75 per cent of the minimum wage).*

## 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.*

*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 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 asks the Government to submit a detailed report on the state of national law and practice regarding labour clauses in public contracts in the light of recently adopted public procurement legislation, including Act No. 53/AN/09/6ème L of 1 July 2009 establishing the Public Procurement Code and Decrees No. 2010-0083/PRE, No. 2010-349/PRE and No. 2010-0085, all dated 8 May 2010.*

*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).*

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

## Ecuador

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1954)**

*Articles 4(2), 10 and 14(b) of the Convention. Partial payment of wages in kind – Limits to attachment of wages – Wage statements.* The Committee has been requesting the Government for several years to indicate the legal provisions, if any, implementing these Articles of the Convention. In the absence of the Government's reply on these points, the Committee is obliged to draw the Government's attention once again to the fact that the general labour legislation does not contain express provisions: (i) regulating the partial payment of wages in kind; (ii) fixing an overall limit to the proportion of wages that may be subject to attachment; and (iii) providing for the issuance of a wage statement at the time of each payment of wages. ***The Committee, therefore, asks the Government to take all necessary measures to ensure that full effect is given to these requirements of the Convention.***

*Article 12(1). Payment of wages on time and in full.* The Committee recalls its previous comment in which it noted the observations of the National Union of Workers of the telephone services body of the Ecuadorian Telecommunications Institute (IETEL) – “17 de mayo” which had been received on 27 September 2005. According to the allegations of that union, more than 5,000 employees of three telecommunication companies had not been paid overtime for work performed on weekly rest days and public holidays during the period 1989–2005, the overall amount due totalling US\$88 million. ***Noting that the Government has still not provided any specific explanations on the merits of the claims put forward by the union or on any action taken to follow up on these claims, the Committee hopes that the Government will provide together with its next report full particulars on the manner in which this dispute has been settled.***

***[The Government is asked to reply in detail to the present comments in 2013.]***

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1970)**

*Articles 1, 3 and 4 of the Convention. Minimum wage fixing machinery –Criteria for determining the minimum wage – Consultations with and participation of the social partners.* The Committee notes the information provided by the Government concerning the establishment of a basic unified wage (*salario básico unificado*) to serve as a wage floor for all workers in general, including domestic, agricultural, small industry, craft and maquila workers. It also notes that under the Ministerial Agreement No. 249 of 23 December 2010, the basic unified wage was fixed at US\$264 per month while Ministerial Agreement No. 369 of 13 January 2012, raised it to US\$292 per month.

The Government indicates that the basic unified wage is determined on the basis of criteria such as inflation, productivity and equity with a view to progressively closing down the gap between the minimum wage level and the cost of the family basket of goods (*canasta familiar*). According to the Government's report, the basic unified wage now covers more than 89 per cent of the cost of the basic family basket of goods, as compared to 65 per cent in 2005.

Moreover, the Committee notes the Government's reference to Ministerial Agreements Nos 117 of 7 July 2010 and 181 of 1 October 2010, which set up 22 sectoral committees regrouping 115 occupational categories for the purpose of better analysing sectoral wage levels and fixing sectoral minimum wages. The Government also refers to Ministerial Agreement No. 255 of 24 December 2010, which set the minimum wage rates for the 22 sectoral committees as from 1 January 2011. Under section 3 of that Agreement, sectoral minimum wages may in no circumstances be lower than the basic unified wage.

While noting these recent developments in the minimum wage fixing process, the Committee observes that current minimum wage levels remain overall insufficient to cover the cost of either the basic or the vital family basket of goods (*canasta familiar básica y vital*). More concretely, the Committee understands that only certain minimum wage rates set by two of the 22 sectoral committees (i.e. the committees for the mine and the transport sectors) exceed the cost of the vital family basket of goods and only certain minimum wage rates in the transport sector exceed the cost of the basic family basket of goods. The Committee also notes that under the National Welfare Plan 2009–13, the Government's objective is to diminish by 27 per cent the number of workers receiving wages inferior to the minimum vital wage by 2013. ***The Committee accordingly asks the Government to continue its efforts to ensure that minimum wages fixed after genuine consultations with employers' and workers' organizations concerned, effectively guarantee a decent standard of living for the workers and their families. In addition, the Committee requests the Government to provide additional explanations on how the basic unified wage and the sectoral minimum wage rates interact with the concept of “decent salary” referred to in sections 8–10 of the Code of Production, which was adopted in December 2010.***

*Article 5. Adequate inspection.* The Committee understands that the enforcement of the minimum wage legislation is weak as a result of challenges faced by the inspection services and a penalty for non-compliance limited to five times the monthly minimum wage regardless of the seriousness of the offence or the number of workers affected. ***The Committee asks the Government to provide full particulars on any measures taken or envisaged with a view to reinforcing the labour inspection services and establishing truly dissuasive sanctions to ensure the effective application of the relevant legislation.***

## Ghana

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (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:

The Committee recalls that it has been commenting on the application of the Convention since its ratification by Ghana and notes that the Government is still unable to indicate any real progress in bringing its national legislation into conformity with the requirements of the Convention. The Government makes renewed reference to section 118 of the Labour Act 2003 even though the Committee has already noted that this provision is not strictly relevant to the subject matter of the Convention and does not give effect to *Article 2 of the Convention* which explicitly requires the insertion of labour clauses in those public procurement contracts meeting the conditions specified in *Article 1* of the Convention. In fact, the general principles set out in the Labour Act regarding minimum wage fixing, maximum working hours or occupational safety and health cannot automatically guarantee to the workers concerned labour conditions which are not less favourable than whichever is the most favourable of the three alternatives provided for in the Convention, i.e. collective negotiation, arbitration or legislation.

As the Committee has stated on a number of occasions, the legislation to which the Government refers in most cases lays down minimum standards, for instance as regards wage levels, and does not necessarily reflect the actual working conditions of workers. Thus, if the legislation lays down a minimum wage but workers in a particular profession are actually receiving higher wages, the Convention would require that any workers engaged in the execution of a public contract be entitled to receive the wage that is generally paid rather than the minimum wage prescribed in the legislation. In other terms, the application of the general labour legislation is not enough in itself to ensure the application of the Convention, inasmuch as the minimum standards fixed by law are often improved upon by means of collective agreement or otherwise.

Moreover, the Government refers once more to the fact that individuals or firms are required to obtain labour clearance certificates before they are allowed to tender for public contracts. In this regard, the Committee is bound to recall that the essential purpose of the insertion of labour clauses in public contracts goes beyond the aims of simple certification, as its purpose is to eliminate the negative effects of competitive bidding on the workers' labour conditions. The Convention seeks to ensure the contractor's commitment to apply high standards of social responsibility in the execution of a public contract which is in the process of being awarded and therefore a mere indication that the contractor concerned has no record of labour law violation in previously completed works is not sufficient to meet its requirements. *As regards the adoption of the Public Procurement Act 2003, the Committee asks the Government to specify the provisions referring to the labour clearance certificate and also forward a copy of the standard tender document used for this purpose.*

*In the interest of maintaining a constructive dialogue, the Committee therefore requests the Government to indicate in its next report any concrete measures taken or contemplated to implement the Convention in law and practice, and recalls in this respect that the inclusion of labour clauses in all the public contracts covered by the Convention does not necessarily call for legislative enactment but may also be effected by means of administrative instructions or circulars.*

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

## Greece

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1955)**

*Article 11 of the Convention. Wage claims as privileged debts in bankruptcy proceedings.* Further to its previous comment concerning the functioning of the wage guarantee fund, the Committee notes the Government's explanations about the legal framework regulating its operation, i.e. Act No. 1836/89 and Presidential Decree No. 1/1990 as well as Presidential Decrees No. 151/1999 and No. 40/2007 issued to align the national legislation with relevant EU Directives. The Government indicates that the wage guarantee fund is operated by the management Board of the Manpower Employment Organization (OAED) and is financed through a compulsory employers' contribution, currently set at 0.15 per cent of the worker's remuneration, and a state subsidy. The Fund principally covers claims for up to three months' unpaid wages arising from a contract of employment and falling within the six month period prior to the publication of a court ruling declaring the employer bankrupt. The Government's report also provides statistical data on the expenditure and number of beneficiaries of the Fund for the period 2000–10. According to these statistics, in 2009, the Fund paid a total amount of €1.44 million to 148 beneficiaries while in 2010, a total of €2.57 million were paid to 530 beneficiaries. *Noting that a wage guarantee institution is a useful complement to the privileged protection of wage claims afforded by this Article of the Convention, the Committee requests the Government to provide additional information, including statistics if available, on the impact the current economic crisis might have on the operation of the fund, particularly as regards its financial sustainability in view of the increasing number of bankruptcies, and any measures taken or envisaged in this respect such as the possible readjustment of the level of the employers' contribution.*

*Article 12. Timely payment of wages. Prompt settlement of wages upon termination of employment.* In its previous comment, the Committee had asked the Government to communicate information on any difficulties experienced in the timely payment of wages, indicating among others the number of workers and the sectors concerned, based on information that problems of non-payment or delayed payment of wages may rise as a result of widespread insolvencies and lack of liquidity. The Committee notes that the Government's report is silent on this point. It observes, however, that according to several sources, the country is experiencing growing difficulties with the regular payment of wages and situations of accumulated wage arrears are reported in several sectors of activity. The Committee notes, for instance, that

according to the 2011 activity report of the Labour Inspectorate (SEPE), published in April 2012, the non-payment of wages represents 68.8 per cent of all labour law infringements observed in 2011 and the non-payment of annual holiday pay 20.6 per cent, that is a marked increase compared to 2010 when 50.5 per cent of all violations related to delayed payment or non-payment of wages, 14.8 per cent to non-payment of holiday pay and 5.6 per cent to non-payment of end-of-year bonus. The SEPE report also shows that by reference to the number of reports filed and amount of fines imposed, the situation appears to concern mostly the sectors of retail commerce, restaurants and catering, construction, hotels, and the food industry.

The Committee understands that the deepening economic and social crisis in the country impacts heavily on the business climate and under the circumstances problems of non-payment of wages can only be expected to persist, if not increase. The Committee notes, for instance, that according to a research conducted by the Institute of Small Enterprises (GSEBEE) and published in January 2011, 84.2 per cent of the enterprises reported that their financial situation had worsened in the last semester and 68 per cent foresaw a further deterioration in the following semester. The same research indicates that 215,000 small enterprises (25.9 per cent) were likely to close down with a total loss of 320,000 jobs. According to another report published by the Institute of Commerce and Services (INEMY) in September 2011, 25 per cent of all registered commercial enterprises had ceased their activities by August 2011, as compared to 15 per cent in the summer of 2010.

*The Committee expresses its deep concern about the marked intensification of infringements of the labour legislation concerning the regular payment of wages and urges the Government to continue to take active steps in order to prevent the spread of problems of non-payment or delayed payment of wages, such as the reinforcement of controls, the strengthening of sanctions, or the use of appropriate incentives. In this connection, the Committee requests the Government to provide detailed information on the effectiveness of the system of enforcement and compliance following the labour inspectorate reform of 2009.*

Furthermore, the Committee recalls that in its previous observation it had also raised the question of considerable wage cuts in the public sector decided as part of the austerity measures to reduce public deficit and had asked the Government to give a detailed account on any new anti-crisis measures affecting wages, including on the necessary consultations with the employers' and workers' organizations concerned. While noting that the Government's report does not contain any new information on this point, the Committee understands that additional fiscal measures have been adopted in November 2012 under the Memorandum of Understanding on the Medium-Term Fiscal Strategy 2013–16 (Memorandum III), including further cuts of up to 35 per cent in the monthly wages of employees under special wage regimes such as judges, diplomats, doctors, professors, members of the armed forces and police, and airport personnel and the elimination of seasonal bonuses of employees of the state and local governments. The new measures are part of fresh budget cuts deemed necessary to ensure the country receives its next bailout instalment from its international creditors.

The Committee understands that the successive rounds of harsh austerity measures are decided under the overall guidance of the European Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF) which have been advising the Government since May 2010 on planning a broad range of reforms for raising the competitiveness of the national economy and the modernization of the public administration. It also understands that most of these measures are meant to reduce an alarmingly high public deficit. The Committee remains *seriously concerned*, however, about the cumulative effect these measures have on workers' income level and living standards and compliance with labour standards related to wage protection. As the Committee has already indicated in its previous observation, wage reductions as such are not dealt with in any of the provisions of Convention No. 95. However, when by their nature and scale wage reductions have dramatic effects on large parts of the workforce to the point of rendering practically meaningless the application of most of the provisions of the Convention, the Committee feels obliged to address the situation through the lens of "wage protection" in a broader sense.

In a related development, the national minimum wage was recently reduced by 22 per cent and even by 32 per cent for workers below the age of 25. Available statistics suggest that the continued downward pressure on wages may result in one fourth of the population falling below the poverty line. According to the 2012 annual report on the Greek economy and employment, published by the Labour Institute of the Greek General Confederation of Labour (GSEE) in August 2012, the purchasing power of the average wage has shrunk to 2003 levels and that of the minimum wage has slumped to the level of the second half of the 1970s. In the light of such developments, the Greek National Commission for Human Rights, in its capacity as an advisory body to the Government in matters of human rights protection, has issued a recommendation in December 2011 expressing its deep concern at, among others, the ongoing drastic reductions in even the lower salaries and pensions.

Under the circumstances, while acknowledging the crucial challenges faced by the country, the Committee recalls the Government's responsibility to strengthen – and not to undermine – labour standards related to wage protection, especially at times of crisis when social justice and income security are dearly needed. As the European Committee of Social Rights has concluded in a recent case (complaint No. 65/2011 filed by the General Federation of the National Electric Power Corporation and the Confederation of Greek Civil Servants' Trade Unions, Decision of 23 May 2012), "the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the [European Social] Charter" and "while it may be reasonable for the crisis to prompt changes in current legislation and

practices in order to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilize the situation of those who enjoy the rights enshrined in the Charter”.

The Committee also draws attention to the importance of open and continuous dialogue with the social partners. As the Committee noted in paragraph 374 of its 2003 General Survey on protection of wages, social dialogue is the only way of sharing the burden of economic reforms while preserving social peace and negotiated solutions have a much better chance of succeeding in a context where social consensus is the only solid basis for the continuation of painful structural changes. The Committee wishes to refer, in this connection, to the conclusions of the Committee on Freedom of Association, approved by the Governing Body in November 2012, following a complaint filed by several trade union confederations against the Government of Greece (Case No. 2820), according to which the Government should promote permanent and intensive social dialogue as it would be essential to the efforts for social peace in the country that consultations take place with the employers’ and workers’ organizations concerned, as a matter of urgency, to review any austerity measures with a view to discussing their impact and to agreeing on adequate safeguards for the protection of workers’ living standards (365th Report of the Committee on Freedom of Association, paragraphs 989–990). ***The Committee accordingly urges the Government to fully consult the representative organizations of employers and workers before the adoption of any new austerity measures and to make every possible effort to avoid any new curtailment of workers’ rights in respect of wage protection in either the public or the private sector and to seek to restore the purchasing power of the wages that has been drastically diminished. The Committee requests the Government to provide a comprehensive report on all wages-related measures adopted in the last three years, the scope of any tripartite consultations held prior to their adoption, and their social impact.***

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Guatemala

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1952)**

*Articles 1 and 3 of the Convention. Scope – Definition of wages – Method of payment.* The Committee notes the observations made by the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG) in a communication of 31 August 2012 on the application of the Convention. In its observations, the MSICG alleges widespread hiring practices that consist, among other things, of disguising an employment relationship as a commercial relationship, under which workers are required to submit invoices so that their remuneration can be treated as a professional fee and not as a wage. According to the MSICG, the safeguards provided in labour law do not apply to commercial relationships. Furthermore, the filing of a wage claim or other complaint can lead to immediate termination of the relationship, and judicial proceedings cannot ensure the protection of workers’ rights in such circumstances.

Referring to the application of the statutory safeguards concerning wage attachment, the MSICG points out the consequences of wages being paid not in cash or by bank cheque or the equivalent, but by bank transfer. Since these bank deposits are not recorded as wage payments, the total amount of the wage may be attached unless the worker proves to the court that the deposits in his/her account correspond to wage payments. Furthermore, according to the MSICG, in most cases, the worker receives neither a statement showing the date of the deposit nor a payslip showing the wage and any deductions, and the General Labour Inspectorate does not check that these documents are sent to the workers. In its observations, the MSICG also asserts that the Government is devising practices whereby the amounts made over to workers in exchange for their labour need not be recorded as wages, which has implications for the calculation of other benefits based on the wage, such as social security benefits and compensation. Lastly, the MSICG asserts that the Government has taken no measures to bring the legislation into line with the Convention on the points the Committee raised in its previous direct request concerning, in particular, the payment of wages in the form of promissory notes or vouchers, and the partial payment of wages in kind. ***The Committee requests the Government to provide any comments it may wish to make in response to the MSICG’s observations.***

## Guinea

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1959)**

*Article 1 of the Convention. Introduction of a minimum wage.* Further to its previous comments, the Committee notes with **interest** the draft new Labour Code, section 241.7 of which provides for the fixing by decree, after an opinion from the Labour and Social Legislation Advisory Committee (a tripartite body comprising, under the terms of section 515.3 of the draft Code, eight representatives of the employers and eight representatives of the workers from the private and the semi-private sectors), of a guaranteed inter-occupational minimum wage (SMIG). It notes that negotiations are currently in progress with a view to determining the amount of the SMIG and understands that the adoption of a decree to this end is one of the priorities for the trade union movement of Guinea. The Committee hopes that the negotiations in progress will soon be concluded and that the Government will take into account, when fixing the rate of the SMIG, the need to ensure a decent standard of living for workers and the economic situation of the country, and that the amount of the minimum wage will be adjusted regularly in accordance with changes in indicators such as the rate of inflation.



Finally, in order to ensure the effectiveness of the regulations to be adopted on the SMIG, the Committee would emphasize the importance of measures intended to publicize the amount of the minimum wage in force and monitor the application of these regulations in practice, particularly through the activities of the labour inspectorate. ***The Committee requests the Government to keep the Office informed of any progress made in the process of adoption of the decree fixing the amount of the SMIG, sending a copy of the prior opinion issued by the Labour and Social Legislation Advisory Committee once it is available, and send all available information on the measures which will be implemented to ensure the effective application of this decree.***

The Committee further notes the documents attached to the Government's report containing the collective agreement and the wage scale for the construction, public works and civil engineering sectors, and also the wage scale negotiated for the Novotel/GHI company. ***The Committee requests the Government to continue to supply information on national or sectoral collective agreements fixing minimum wage rates.***

Finally, the Committee wishes to take this opportunity to remind the Government that, on the basis of the recommendations of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body considered that Convention No. 26 was one of the instruments which were no longer up to date, even though they were still relevant in certain respects (GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). The Committee therefore suggests that the Government contemplate the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131), which represents a degree of progress in comparison with Convention No. 26, for example, by providing for a wider scope, the setting up of a general minimum wage system and the adoption of certain criteria for determining minimum wage levels. ***The Committee requests the Government to keep the Office informed of any decision taken in this regard.***

### ***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 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.***

### ***Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)*** ***(ratification: 1966)***

*Articles 1 and 3 of the Convention. Establishment of minimum wage fixing machinery.* The Committee notes the Government's indications that the national legislation does not regulate the agricultural sector. In this respect, the Committee however observes that, in accordance with section 1, the Labour Code of 1988 is applicable to workers and employers exercising their professional activity throughout the Republic of Guinea, and that agricultural workers are not therefore excluded. It also notes with *interest* the draft new Labour Code, the scope of application of which is extended to persons engaged in an economic activity outside an employment relationship, and section 241.7 of which provides for the fixing by decree, following an opinion by the Advisory Commission on Labour and Social Legislation, of a minimum guaranteed inter-occupational wage (SMIG). The Committee notes that negotiations are currently being held with a view to determining the amount of the SMIG. It hopes that the SMIG will be applicable to agricultural workers or, if not, that tripartite negotiations will soon lead to the fixing of a guaranteed minimum agricultural wage (SMAG) so that the many agricultural workers in the country are not deprived of all protection in relation to minimum remuneration, which is one of the fundamental aspects of decent work. ***The Committee requests the Government to provide information on the measures adopted or envisaged to ensure the adoption of minimum wage fixing machinery for the agricultural sector.***

The Committee also notes the Government's indication that Convention No. 99 is not on the list of up-to-date Conventions. In this respect, the Committee draws the Government's attention to the fact that, on the basis of the recommendations of the Working Party regarding Policy on the Revision of Standards, the ILO Governing Body included Convention No. 99, among the instruments that are not completely up to date, but remain pertinent in certain respects (GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). The most recent instrument in this field is the Minimum Wage Fixing Convention, 1970 (No. 131), which contains certain improvements in relation to Convention No. 99, including a broader scope of application, the need for a complete system of minimum wages and the enumeration of criteria for determining the level of minimum wages. ***The Committee therefore invites the Government to examine the possibility of ratifying Convention No. 131 and requests it to keep the Office informed of any decision that may be taken in that respect.***

## 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 wage arrears situation.* The Committee has been commenting for the last ten years on widespread problems of accumulated wage arrears, especially in the Iranian textile industry, and has been drawing the Government's attention to the need for sustained action to effectively put an end to such practices. The situation of unpaid wages has been examined on two occasions by the Conference Committee on the Application of Standards, in June 2005 and in June 2007, while the Office has undertaken two technical assistance missions on the same issue in April 2006 and in October 2007. In its previous comment, the Committee had noted that the description of the overall situation of wage arrears remained unclear as the Government had not provided precise information on the level of wage arrears by region and sector of economic activity or on the implementation of measures aimed at resolving the persistent problems of unpaid wages.

In its latest report, the Government once more outlines the reasons – structural, financial and political – that led industrial sectors such as textile and steel mill plants to decline, characterized by heavy financial losses, reduced exports, low competitiveness and liquidity problems. The Government also highlights policies and initiatives for the modernization of enterprises, the improvement of the business environment and the promotion of employment as a means of redressing the national economy and thus eventually resolving the problem of wage arrears. For instance, the Government refers to the establishment of the High Centre for the Modernization of Mine and Industry, which provided in 2012 US\$1 billion in grants for the renovation of industries, or the Special Joint Committee composed of senior officers of several ministries, which receives requests for assistance from troubled enterprises and releases funds as appropriate. However, the Government's report provides very limited information concerning the evolving wage arrears situation in terms, for instance, of the overall amount of accumulated wage arrears, the type of sectors and number of enterprises affected, or the average of the delay in the payment of wages. Among the limited statistical information provided by the Government, the Committee notes that in the period 2010–11, a total amount of 18.3 billion Iranian Rial (IRR) (approximately US\$1.5 million) were paid to 4,182 workers in the form of financial support following claims filed with the dispute settlement boards. Regarding the monitoring of the wage debt, the Government indicates that in the period 2011–12, the labour inspection services carried out 404,504 inspection visits and found 6,620 establishments experiencing problems of delayed payment of wages. The Government also indicates that non-payment or delayed payment of wages represents 5.8 per cent of all workers' complaints in workplaces.

The Committee is mindful of the adverse economic and political context in which the Government is seeking to address the structural deficiencies of the national economy and strengthen the productivity and sustainability of enterprises. While it is obvious that the problem of wage arrears is directly linked to the general situation of the national economy, the Committee considers that economic and financial difficulties cannot absolve the Government of its responsibility to ensure the timely and full payment of the wages due to workers for work already performed or services already rendered, in accordance with the requirements of *Article 12* of the Convention. As the Committee has pointed out on numerous occasions, devising an effective response to such a complex problem presupposes a proper assessment of the problem in its true dimensions, which, in turn, is only possible through the systematic collection of up-to-date and reliable statistical information. ***Noting with concern that the situation of wage arrears continues to be not systematically monitored, the Committee strongly encourages the Government to take all appropriate measures to improve data collection so that the situation can be kept under close supervision and constant assessment. While fully conscious that the global economic downturn and the surrounding political tensions minimize the chances for short-term solutions to problems of that nature, the Committee hopes that the Government will intensify its efforts and exhaust all available means, including the use of sufficiently dissuasive sanctions, to progressively eliminate and prevent the recurrence of similar practices in the future.***

*[The Government is asked to reply in detail to the present comments in 2014.]*

## Jamaica

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes the adoption of the Standards Bidding Documents – Procurement of Works (Selective Tendering) in April 2010 as well as the adoption of the four-volume Revised Handbook of Public Sector Procurement Procedures (RHPP) in October 2010. However, the Committee notes with *regret* that these voluminous and detailed texts contain no reference whatsoever to the working conditions of workers employed under public contracts nor do they provide for labour clauses of the type prescribed by the Convention. Despite the specific guidance given by the Committee in its previous comments, the Government has not taken any steps to effectively implement the Convention either through the RHPP, which were being elaborated since 2008, or through the Procurement Regulations prepared under the Contactor General Act. The Committee is therefore obliged to conclude that at present the Convention is not given effect in either law or practice.

The Committee wishes to draw the Government's attention once again to the basic purpose of the Convention which is to ensure that the workers employed for the execution of public contracts enjoy wages and other working conditions 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. This has the effect of setting as minimum conditions for the contract standards that are already established within the locality. The further aim is that local standards higher than those of general application (this in practice means the most advantageous labour conditions) should be applied, where they exist. In fact, the type of labour clauses prescribed by this Article of the Convention seek to oblige the contractor to apply the most advantageous pay rates, including overtime pay, and other working conditions, such as work hour limits and holiday entitlement, established in the industrial sector and geographical region in question. ***Recalling that the inclusion of appropriate labour clauses in all public contracts covered by the Convention does not necessarily require the enactment of new legislation but can be also realized by administrative instructions or circulars, the Committee hopes that the Government will take all necessary measures without further delay in order to bring the national legislation into conformity with the provisions of the Convention.***

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Japan

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1971)**

*Articles 3 and 4 of the Convention. Minimum wage system.* The Committee notes the comments of the National Confederation of Trade Unions (ZENROREN), dated 25 September 2011, and the Government's reply concerning the application of the Convention. According to ZENROREN, the implementation of the minimum wage legislation raises four issues: (i) low level of minimum wage rates; (ii) unfair method of calculation of the minimum wage; (iii) widening gaps among prefectural minimum wage rates; and (iv) discrimination against ZENROREN representatives in minimum wage councils.

Regarding the first point, ZENROREN considers that, contrary to the requirements of *Article 3* of the Convention and section 9 of the Minimum Wages Act, both of which require that the cost of living be taken into account when setting minimum wage rates, the current rates are fixed at levels insufficient to cover the needs of a worker, and even less so the needs of his or her family. What is more, minimum pay rates are often below the amount paid under the social aid programme (or livelihood assistance). For instance, while the minimum monthly wage is fixed at ¥111,183 in Tokyo and ¥85,679 in Kochi, the amounts paid under the social aid programme are ¥141,680 in Tokyo and ¥112,056 in Kochi respectively.

In its reply, the Government indicates that, in fact, minimum pay rates in nine prefectures were found to be below the social aid allowance but measures were taken to raise the minimum wage in six of them while efforts are now being made for the readjustment of the minimum wage in the remaining three prefectures.

With respect to the second point, ZENROREN maintains that the Government uses various methods to misrepresent minimum wage levels as compared to social aid standards. For instance, the Government uses the figure of 178.8 as being the average number of hours of work per month, which is unduly long and clearly exceeds average working hours, including overtime, of full-time workers in all industries.

In its reply, the Government states that the current method of comparing minimum wage levels and social aid benefits as well as the reference number of monthly working hours, have been adopted through sincere discussions by the Central Minimum Wages Council which brings together persons representing the general interest and workers' and employers' representatives.

As regards the third point raised in ZENROREN's comments, it is alleged that the gaps among the minimum wage rates applicable in different prefectures have been widening since the revision of the Minimum Wages Act in 2007, which introduced the consideration of cost of living and general wage level by prefecture. For instance, the minimum pay rate applicable in Tokyo is 23 per cent higher than that of Okinawa. ZENROREN also indicates that it has conducted a survey showing that the cost of living was practically the same in the prefectures of Saitama, Iwate, Shizuoka and Nagasaki, and there was therefore no reason for establishing different minimum pay rates. Moreover, ZENROREN claims that regional minimum wage gaps have a serious impact on employment in rural areas as young workers increasingly migrate to big cities in the search of higher pay. ZENROREN considers that there is no justification for a relatively small country to have 47 different minimum wages and therefore calls for the adoption of a single, generally applicable minimum wage rate.

In its reply, the Government indicates that regional differences exist in the cost of living and the ability of enterprises to pay wages, and therefore it is only natural to determine wage rates according to the actual conditions of the respective regions. The Government adds that the role of the Central Minimum Wages Council is to set a rough estimate of the revised minimum wage rate in order to facilitate discussions and maintain consistency at the prefectural level.

Finally, ZENROREN alleges that it has been systematically excluded from the composition of the central and 47 prefectural minimum wage councils. It indicates that contrary to the appointment of employers' representatives where

members are selected from three main employers' associations, on the workers' side, only members supported by the Japan Trade Union Confederation (JTUC-RENGO) and its affiliates have been appointed so far.

In its reply, the Government merely indicates that workers' representatives are appointed in accordance with the procedures set out in section 23 of the Minimum Wages Act and section 3 of the Minimum Wages Councils Order.

***While noting the Government's explanations, the Committee would appreciate receiving additional information with regard to: (i) measures taken or envisaged aimed to ensure that minimum pay rates are higher than the amount of the livelihood assistance; (ii) any official report or research study addressing in greater detail the advantages and disadvantages of maintaining a system of separate minimum wage rates by prefecture; and (iii) any consideration given to the possibility of appointing workers' members to minimum wages councils from different trade union confederations in the interest of amplifying the representativeness of the councils.***

In addition, the Committee raises other points in a request addressed directly to the Government.

## Republic of Korea

### ***Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2001)***

*Article 4(3)(b) of the Convention.* Appointment of independent members of a minimum wage fixing body. The Committee notes the comments of the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) dated 12 June 2012, and the Government's reply dated 26 September 2012 concerning the application of the Convention.

According to the allegations of the FKTU and KCTU, the Government's decision to appoint nine public interest members of the 9th Minimum Wage Council (MWC) unilaterally, without any consultations with labour and management organizations, violates the Convention, which calls for the appointment of independent persons after full consultation with representative organizations of employers and workers concerned, where such organizations exist and such consultation is in accordance with national law or practice.

The two workers' organizations also indicate that although the Minimum Wage Act does not specify the procedure for recommending the public interest members of the Council, efforts were made up until 2008 to appoint the public interest members in a manner similar to that followed for the appointment of public interest members to the Economic and Social Development Commission (ESDC). According to the Act on Establishment and Operation of the ESDC, public interest members are appointed by the President following the recommendations of workers' and employers' organizations.

According to the FKTU and KCTU, the qualifications of the nine public interest members are crucial for minimum wage negotiations since they represent the neutral group between the labour and management sides, especially since recent wage negotiations have proven difficult. They also indicate that measures should be taken to diversify the profile of the nine public interest members since at present they are all professors from the same university. Finally, the FKTU and KCTU maintain that the MWC as a social agreement body independent of the Government should be composed and operated in a democratic way, and to this end, new draft legislation for the revision of the Minimum Wage Act has been submitted to the National Assembly.

In its reply, the Government draws attention to the provision of *Article 4(3)(b)* of the Convention, which requires consultations only to the extent that such consultations are prescribed by national law or established in practice. In this connection, it refers to the negotiating history of this provision which shows that an unqualified consultation requirement was a major concern for many countries and therefore the reference to national law or practice was introduced to provide flexibility. In the Government's view, therefore, *Article 4(3)(b)* of the Convention cannot be construed as meaning that a member State is obliged to undertake full consultations with labour and management before appointing independent representatives, if such consultation is not specified by national law or does not exist in national practice. The Government accordingly states that consulting workers' and employers' organizations prior to the appointment of the public interest members of the MWC is not provided for in the Minimum Wage Act and it has never been part of national practice, and therefore the allegations of the FKTU and KCTU are grounded on an incorrect interpretation of *Article 4(3)(b)* of the Convention.

In addition, the Government describes the process of minimum wage negotiations within the MWC, and the role of public interest members as mediators seeking a compromise between the workers' and employers' proposals, which underscores the importance of professionalism and independence on their part. In the Government's opinion, if workers' and employers' organizations had a right to recommend public interest members, the independence and impartiality of those members would be seriously undermined.

Finally, with regard to the proposed revision of the Minimum Wage Act according to which labour, management and the administration would select three public interest members each, the Government considers that this would be tantamount to having 12 workers' members, 12 employers' members and three public interest members of the Council thus tilting the balance of its tripartite composition.

The Committee takes due note of the comments of the FKTU and KCTU and of the Government's response. The Committee observes that the Convention requires full consultations with representative employers' and workers' organizations prior to the appointment of independent experts to a minimum wage fixing body only where such consultations are either expressly provided for in national laws or regulations or clearly established in practice. This conclusion is also reflected in paragraph 222 of the 1992 General Survey on minimum wages while the same view was expressed in an informal opinion given by the Office in 1980 at the request of a country.

In addition, the Committee considers that under this Article of the Convention, specific competence and impartiality are key qualifications of the members representing the general interest of the country – a point that is also found in Paragraph 9 of the Minimum Wage Fixing Recommendation, 1970 (No. 135), which refers to “suitably qualified” and “independent” persons. Therefore, based on the Government's explanations that consultations prior to the appointment of the public interest members are neither provided for in the minimum wage legislation nor established in practice, the Committee is of the view that the selection process and working method of the Minimum Wage Council are consistent with the requirements of *Article 4(3)(b)* of the Convention.

However, the Committee feels obliged to recall the fundamental importance of genuine and effective consultations with the social partners for the smooth operation of the minimum wage fixing process. ***The Committee trusts that in the interest of promoting constructive social dialogue, the Government and the social partners will engage in open and good faith discussions with a view to examining possible adjustments or improvements to the existing system of minimum wage negotiations in order to enhance efficiency, prevent conflict and build confidence.***

In addition, the Committee is raising other points in a request addressed directly to the Government.

## Libya

### **Protection of Wages Convention, 1949 (No. 95) (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 recalls its previous observations concerning the recurrent incidents surrounding the massive expulsion of foreign undocumented workers and the alleged non-payment of wages owed to those workers. The Committee notes the Government's report as well as the report of the technical assistance mission to the Libyan Arab Jamahiriya undertaken by the Office in July 2007. The five-day mission was scheduled as a follow-up to the discussion that took place in the Conference Committee on the Application of Standards in June 2006. The purpose of the technical assistance mission was principally to assess the current situation with respect to the treatment of irregular foreign workers in the light of the requirements of Conventions Nos 95 and 111, and to obtain information on any concrete measures the Government might have taken in this regard. The mission was also to address broader issues concerning the application of ratified Conventions in the light of the Committee's pending comments and to evaluate the need for technical assistance in order to formulate initial proposals for targeted initiatives.

Having duly examined the Office report, the Committee is satisfied that a series of open and constructive discussions with government officials, public institutions and employers' and workers' organizations – characterized by a high level of cooperation on the part of the Libyan authorities – permitted the clarification of a number of issues and a direct dialogue on certain recent legislative developments affecting the application of Convention No. 95. The Committee notes, in particular, the adoption of a ministerial decision for the regularization of foreign workers and the contractual arrangements put in place to prevent the recurrence of past incidents as well as the establishment of a multi-ministerial committee with the participation of the workers' organization to resolve any claims irregular immigrants might have before deportation orders can be issued.

More concretely, the Committee notes that according to Decision No. 20/2007 of the General People's Committee for Manpower, Training and Employment on some provisions concerning the organization, import and employment of foreign labour, anyone wishing to enter the country for work would hereafter be obliged to conclude an employment contract in advance and have that contract endorsed by the Libyan authorities in the country of origin whilst all foreign workers currently present in the country would have until 31 July 2007 to regularize their situation by undergoing a medical examination and obtaining a valid employment contract. Moreover, by Decision No. 56/2006 of the Council of Ministers, a multi-stakeholder committee – composed of members of the security forces, immigration services, consular services, the Ministries of Manpower and Foreign Affairs and also workers' representatives – was set up with a view to examining any claims irregular foreign workers might have before being expelled from the country. According to the new arrangement, undocumented foreign workers who have wage-related claims could not be expelled until such claims are reviewed and they sign a document certifying that all outstanding payments have been settled. The Committee welcomes these developments and will be interested to learn of their effectiveness in preventing the recurrence of events such as those which occurred in three distinct periods in the past. It recalls, in this connection, that Convention No. 95 covers regular and irregular workers alike in so far as the payment of wages on time and in full is concerned, and therefore matters such as immigration policy or administrative measures against clandestine workers should not impact on its application. ***The Committee therefore requests the Government to provide detailed information, including all available statistics, on the practical implementation of the new measures concerning the regularization of foreign workers and the setting up of the standing committee to review claims of irregular workers facing expulsion.***

In addition, the Committee notes that according to the information provided by the Government in its last report, the total number of workers from neighbouring countries who have been deported so far is 9,424 while the amount of US\$1.88 million has been paid to them in the form of pocket money before their departure. ***As it is not clear to which period the above statistical information refers, the Committee would be grateful if the Government would provide additional explanations in this respect.***

As regards the application of *Articles 2, 4, 7 and 8 of the Convention*, the Committee notes the explanations given by the Government to the technical assistance mission concerning the provisions of existing legislation and the commitment to amend the relevant provisions of the Labour Code concerning the coverage of agricultural workers and the setting of an overall limit to the permissible amount of payment in kind. In this respect, the Committee understands that a copy of the draft Labour Relations

Act in its current reading has been submitted to the Office for technical comments. It also understands that the new draft legislation, which is now before the General People's Congress for review, is a consolidated text composed of three parts, one on the employment relationship and labour conditions, one on the public service, and one on industrial relations. *The Committee asks the Government to keep the Office informed of any developments regarding the finalization and adoption of the new Labour Relations Act, in particular, any legislative changes following up on the recommendations of the ILO technical assistance mission.*

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

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1971)**

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

*Articles 3 and 4 of the Convention. Review and adjustment of the minimum wage.* The Committee has been raising questions in recent years concerning the operation of the minimum wage fixing machinery, the periodicity of adjustment of the minimum wage and the criteria used for such adjustment. Following the establishment of the Wages Board in 2006 and the Decision of the General People's Committee in 2007 to set the national minimum wage at 250 dinars (approximately US\$208) per month, the Committee has requested the Government to provide more detailed information on the operation of the Wages Board, the eventual revision of the national minimum wage as well as the enforcement of the minimum wage legislation in practice. In its last report, the Government makes renewed reference to the ILO technical assistance mission that visited the country in July 2007 and emphasizes its willingness to improve conditions of workers in order to achieve full employment and social welfare. *The Committee trusts that the Government will provide in its next report full particulars on the effect given to the requirements of Articles 3 and 4 of the Convention, especially the manner in which the basic needs of workers and their families are taken into account in fixing the minimum wage level, including any surveys or studies of national economic conditions. Moreover, recalling that under Decision No. 613/2006 of the Secretary of the General People's Committee for Manpower, Training and Employment, the Wages Board holds regular meetings once every three months and may initiate the procedure for the revision of the minimum wage whenever it considers it necessary, the Committee asks the Government to provide all available information on the Board's most recent meetings and any decision taken or envisaged concerning the review of the minimum wage rate currently in force. Finally, the Committee would be grateful if the Government would provide in its next report up to date information on measures to ensure compliance with the national minimum wage or any difficulties experienced in this respect, in particular, the number of labour inspection visits carried out and violations reported, with special reference to migrant workers who constitute half of the total workforce.*

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

## **Morocco**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1956)**

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* For several years the Committee has been drawing the Government's attention to the fact that Moroccan legislation lays down no requirement to include labour clauses – as prescribed by the Convention – in public contracts. In its latest report the Government refers to section 12 of the general administrative clauses for public contracts (CCAG-T), approved by Decree No. 2-99-1087 of 4 May 2000, which stipulates that in the conclusion of public contracts, performance bonds are established in an amount determined in the specifications to be produced by each bidder. The Government states that the purpose of requiring such a bond is to ensure that bidders fulfil their commitments, otherwise the contracting authority shall make a deduction from the bond to compensate workers adversely affected, in accordance with section 20(5) of the CCAG-T. The Government again refers to section 20 of the CCAG-T, which sets out the formalities and prescriptions applying to the hiring of workers and under which the contractor must show that the wages paid to the workers are not lower than the statutory minimum wage. The Government also refers to section 25 of Decree No. 2-98-482 of 30 December 1998 laying down the conditions and forms of government procurement contracts, and to provisions requiring bidders to be members of the National Social Security Fund, to which they must submit regular statements of wages.

The Committee notes, in this connection, that the abovementioned provisions of two decrees mentioned above are not sufficient to ensure application of the Convention, since they merely remind bidders that they are required to comply with the labour legislation. They are in fact pre-qualification criteria that contractors and suppliers must meet in order to comply with the prescriptions in force in Morocco. The Committee refers in this context to paragraphs 117 and 118 of its General Survey of 2008 on labour clauses in public contracts, in which it pointed out that the Convention does not relate to some general eligibility criteria or pre-qualification requirements of individuals or enterprises bidding for public contracts. Furthermore, certification offers some proof about tenderers' past performance and law-abiding conduct but carries no binding commitment with regard to prospective operations as labour clauses do.

What the Convention does require is that tenderers be informed in advance, through standard labour clauses in the tendering documents that, if they succeed in obtaining the contract, they will have to apply wages and other working conditions that are at least as favourable as the highest standards established for the same district by collective agreement, arbitration award or national laws or regulations. *Noting therefore that the legislation on public contracts still falls short of the requirements of the Convention, the Committee again asks the Government to take the necessary steps without further delay to bring the national legislation into line with the Convention.*

## Myanmar

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1954)

*Articles 1 and 3 of the Convention. Minimum wage fixing machinery.* Following up on its previous comments, the Committee notes the Government's statement that the country is in a transitional period and that existing labour laws are being amended while new ones are being adopted. The Government also states that in this context the Minimum Wages Act, 1949 is in the process of being reviewed to be brought fully in line with relevant international labour standards. The Committee understands that new draft minimum wage legislation is being prepared and it has been communicated to the Office for preliminary comments. The Committee is particularly encouraged by recent developments, namely the International Labour Conference decision of June 2012 to lift most of the limitations in ILO activities and technical assistance which had been applied since 1999, and the conclusions of the Officers of the Governing Body who visited the country in May 2012 and who observed the rapid transformation of Myanmar's relationship with the multilateral system. The Committee accordingly expresses the firm hope that in this climate of transition towards a more open and democratic society, the Government will seize the opportunity to introduce all necessary changes for the modernization of the minimum wage legislation and the establishment of a truly comprehensive system of minimum wages based on workers' needs and periodically reviewed after consultation with employers' and workers' representatives. **The Committee requests the Government to keep the Office informed of any progress made regarding the approval of the new Minimum Wages Act by the National Parliament (Pyidaungsu Hluttaw) and to transmit the text of the new legislation once it has been adopted.**

## Netherlands

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1952)

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* For the last five years, the Committee has been drawing the Government's attention to the fact that public procurement legislation does not contain any provisions giving effect to the specific requirements of the Convention. Over the same period, the Committee has been in receipt of a number of observations made by the Netherlands Trade Union Confederation (FNV) raising the same point. The Committee recalls that in its report submitted in 2008 the Government had admitted that the Convention was not fully implemented and had indicated that it was examining means for improving compliance with the Convention. In its latest report, however, the Government states that the Convention is fully complied with through existing measures, namely the system of universally binding collective agreements and the minimum requirements of the labour legislation which would apply if no universally binding collective agreements apply. The Government also states that its system of universally binding collective agreements is fully consonant with recent jurisprudence of the European Court of Justice, in particular the *Rüffert* case (C-346/06), and concludes that there is no specific reason for further adjustments of the implementation of Convention No. 94. The Committee notes that in a communication dated 31 August 2012, the Confederation of Netherlands Industry and Employers (VNO-NCW) has expressed its full support for the Government's position in this matter.

In addition, the Committee notes the new observations of the FNV dated 30 August 2012 according to which the Government, although it has ratified Convention No. 94 a long time ago, has no intention whatsoever to fully comply with its requirements. The FNV points out that draft section 2.8 of the Public Procurement Bill, which is now before the Senate, essentially reproduces the purely permissive provision of section 26 of the Order of July 2005 implementing the EU Public Procurement Directive of 2004 and therefore does not ensure the observance of *Article 2* of the Convention under which public contracts to which the Convention applies must include in all circumstances clauses ensuring to the workers concerned, wages, hours of work and other working conditions which are not less favourable than those established for work of the same nature in the same area by collective agreement, arbitration award or national laws or regulations. The FNV also reiterates earlier comments on the system of declaring collective agreements generally applicable under the Collective Labour Agreements Act and on the implications of the *Rüffert* case basically denouncing the Government's contradictory statements and attitude on this subject.

While noting the latest exchange of views, the Committee feels obliged to recall that the manner in which the Convention is purportedly implemented through Order of 16 July 2005 on procedures for the award of public works, supply and service contracts, has been thoroughly examined in the comment that was addressed to the Government in 2007. As the Committee explained in that comment, section 26 of the Order of 16 July 2005 provides that the contracting authority may attach particular social or environmental conditions to public contracts, whereas the Convention requires the inclusion of labour clauses of the type provided for in *Article 2* in all circumstances. The Committee further explained that, apart from this core requirement, the Convention also calls for other measures, including appropriate publicity to be given to the terms of labour clauses, the posting of notices at the workplace and adequate sanctions for failure to observe the provisions of labour clauses, as well as effective measures to enable workers who have been underpaid to recover any sums due to them. The Committee is, therefore, of the view that, as it currently stands, the national public procurement

legislation is not consistent with the specific requirements of the Convention and accordingly the Government should consider appropriate steps in order to bring national law and practice in line with its provisions. *The Committee firmly hopes that in the ongoing process of elaboration of the Public Procurement Bill, the Government will seize the opportunity to introduce the necessary provisions to ensure full compliance with the Convention. The Committee requests the Government to keep the Office informed of any progress made in this regard and to transmit a copy of the new public procurement legislation once it has been adopted.*

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1973)**

*Articles 1 and 2 of the Convention. Lower minimum wages for young workers.* The Committee recalls its previous observation in which it noted the comments made by the Netherlands Trade Union Confederation (FNV) concerning the differentiated minimum wage levels for young workers below 23 years of age.

In its reply, the Government indicates that the lower minimum wage rates for young persons strike a balance between two objectives of government policy, namely ensuring that young persons remain in education as long as possible and do not drop out of school, and preserving and promoting employment for young persons who enter the labour market. With respect to the first objective, the Government is of the view that if the minimum wage were to be substantially higher this might encourage young persons to drop out of school and to try to find work, even though they do not yet have the necessary skills. As regards the second objective, the Government considers that an unduly high minimum wage for young workers might result in a loss of employment for this group, as wage costs would no longer match their productivity, and therefore demand for young workers would decline sharply.

While subscribing to the principle of equal remuneration for work of equal value, the Government states that, as a matter of fact, young persons are generally less productive than adults and require more supervision. Therefore, a lower rate for young persons is not unreasonable nor is it inconsistent with the principle of equal remuneration for work of equal value.

The Committee notes that the Confederation of Netherlands Industry and Employers (VNO-NCW) and the International Organisation of Employers (IOE) in a communication dated 31 August 2012 have expressed their full support for the Government's views in this matter.

Further, the Committee notes the new observations of the FNV dated 30 August 2012 according to which there is no justification for the age discrimination in minimum wages. Recalling that one third of young people between 18 and 23 years old have an independent household, and also recalling that an 18-year old worker receives €658 while the full minimum wage is €1,446, the FNV finds the situation of young adults of 21–22 year-olds particularly distressing. With respect to the Government's policy to reduce school drop-outs, the FNV considers that even if young persons were tempted by a higher wage, they would still be obliged to return to school in order to get a starting qualification. In relation to the impact on employment of the possible abolition of the lower minimum wages for young adult workers, the FNV indicates that there is no research substantiating the Government's fear that youth unemployment will rise. Finally, the FNV considers that the notion that young persons are by definition less productive is outdated as young adults can be energetic and may master new skills.

While noting the different views, the Committee considers that affirming that young workers are less productive than adult workers is a generalization which may not hold true in many cases, especially for those young adult workers between 18 and 23 years of age, and which is not corroborated by objective evidence. The Committee also considers that in light of the principle of equal remuneration for work of equal value, remuneration levels should be determined on the basis of objective factors such as the quantity and quality of work performed, and not stereotypical assumptions linking low productivity with young age. *The Committee accordingly requests the Government to consider the possibility of engaging broad consultations with all interested stakeholders regarding the advisability of maintaining differentiated minimum wage rates, especially for young adult workers below 23 years of age, in the light of the overriding principle of equal remuneration for work of equal value.*

## **Norway**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1996)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee refers to its previous comments, in which it noted with interest the adoption of Regulation No. 112/2008 of 8 February 2008 regarding wages and working conditions in public contracts, which gives effect to the Convention. It notes that the Surveillance Authority of the European Free Trade Association (EFTA) sent to the Norwegian Government, on 29 June 2011, a reasoned opinion in which it referred to the *Rüffert* decision delivered by the European Court of Justice (ECJ) on 3 April 2008. On the basis of this case law, the EFTA Surveillance Authority alleged that, by maintaining Regulation No. 112/2008 in force, Norway was in breach of the Agreement on the European Economic Area (EEA) and Directive No. 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, this directive being applicable to Norway as a State party to the EEA. The Committee notes that, in the reply that it sent to the EFTA Surveillance Authority on 15 November 2011, the Government emphasized the importance of



Regulation No. 112/2008 in its plan to combat social dumping and recalled that this instrument gives effect to Convention No. 94. Nevertheless, in order to guarantee better compliance with EEA law, the Government introduced a number of amendments to the Regulation, which came into force on 15 November 2011. The Regulation, as amended, in essence provides that the minimum wage rates which must be respected are those resulting from collective agreements concluded at the national level. For the sectors covered by regulations extending the application of collective agreements, Regulation No. 112/2008 henceforth refers to the wages and working conditions derived from these regulations. There is no longer any reference to wages and working conditions prevailing in the region and the occupation concerned. The amended Regulation also specifies which types of wages and working conditions are to be applied, namely minimum rates of pay, working time and compensation for travel, board and lodging. Furthermore, the contracting authorities have to make it clear in the call for tenders and in the contract documents that these conditions are to be complied with. Finally, the Committee notes the report prepared by the company KPMG on social dumping in public contracts awarded by municipalities, a copy of which was attached to the Government's report and which examines in particular Regulation No. 112/2008 and the procedure initiated by the EFTA Surveillance Authority against Norway, and which explicitly refers to the Convention.

The Committee also notes the comments made respectively by the Norwegian Confederation of Trade Unions (LO) and the Confederation of Norwegian Business and Industry (NHO), supported by the Enterprise Federation of Norway (VIRKE), which were attached to the Government's report. The LO considers that the Government's report on the application of the Convention is satisfactory. The NHO, however, considers that the amended Regulation does not apply to the private sector, as noted by the EFTA Surveillance Authority, and that it is therefore still not in compliance with the EEA Agreement. The NHO adds that including information on the contract clauses in the call for tenders and other documents is not sufficient, as the contracting authorities must also specify which collective agreement and which specific parts of the agreement shall apply.

The Committee notes the efforts made by the Government to continue to implement the Convention, despite the procedure initiated against it by the EFTA Surveillance Authority. While noting that it is not its role to comment on decisions of the ECJ on the compatibility of national legislation with Community law, the Committee recalls that the *Rüffert* decision, to which the EFTA Surveillance Authority referred in its reasoned opinion, concerned Germany, which has not ratified Convention No. 94. The situation of Norway is therefore different in legal terms as it is bound by the Convention.

The Committee understands that, in November 2011, the Office contacted the EFTA Surveillance Authority expressing its willingness to engage in discussions on the issues raised in the reasoned opinion relating to Norway's commitments deriving from the ratification of the Convention, but that the EFTA Surveillance Authority has not up to now taken up this opportunity. The Committee also notes that, in its resolution of 25 October 2011 on modernization of European Union public procurement policy, the European Parliament called for an explicit statement in the directives on public procurement that they do not prevent any country from complying with ILO Convention No. 94, and it called on the European Commission to encourage all European Union Member States to comply with the Convention. Moreover, the Committee notes with *interest* the terms of Regulation No. 112/2008, as amended, which aims to improve the information provided to applicants for tenders and co-contractors on the labour clauses which have to be complied with when executing public contracts. With regard to the terms of the labour clauses, however, the Committee recalls that the collective agreements referred to in *Article 2(1)* of the Convention are those concluded between organizations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned, and not only collective agreements declared to be of general application. ***In light of the above considerations, the Committee requests the Government to keep the Office informed of any new developments in the procedure initiated by the EFTA Surveillance Authority against Norway and to provide information on the manner in which Regulation No. 112/2008, as amended, gives effect to the Convention, particularly concerning compliance with the wage rates and other working conditions set out in the collective agreements which have not been declared of general application.***

## Panama

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1971)

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. Inclusion of labour clauses in public contracts.* Further to its previous comments, the Committee notes that the Government's report merely repeats information that was sent previously and does not refer to any progress made with regard to bringing the national legislation into line with the provisions of the Convention. The Committee previously noted the reference made by the Government to two communications, No. DM.359.2008 of 5 May 2008 and No. DM.374.2008 of 7 May 2008, sent by the Ministry of Work and Labour Development (MITRADEL) to the Ministry of Economic and Financial Affairs (MEF) and the Directorate-General of Public Procurement, respectively. Noting that the situation remains unchanged, the Committee reiterates that clauses in public contracts which merely recall the applicability and binding nature of national labour legislation, in particular with regard to wages, working hours and other conditions of work, do not comply with the provisions of the Convention.

Moreover, the Committee understands that the Directorate-General of Public Procurement, with the assistance of the World Bank, has developed a strategic plan to modernize the public procurement system and give it greater transparency and effectiveness. The plan comprises six tiers, including one concerned with ensuring the uniformity of tendering procedures and the preparation of standard documents. In this regard, the Committee considers that the Government might take this opportunity to adopt legislative provisions which would finally make it possible to bring the legislation into line with the provisions of the Convention. *While reminding the Government that it can avail itself of technical assistance from the Office if it so desires, the Committee urges it to take the necessary steps to give effect to the provisions of the Convention and requests it to keep the Office informed of any developments, particularly in the legislative field.*

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

## Paraguay

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1966)**

*Articles 2, 3, 4, 6, 7 and 12 of the Convention. Scope of application – Payment of wages in kind – Indigenous workers.* The Committee has been drawing the Government's attention for several years to the need to extend the coverage of the provisions of the Labour Code regarding protection of wages to agricultural workers and also the need to consider the introduction of an express provision prohibiting the partial payment of wages in the form of liquor of high alcoholic content or noxious drugs. In addition, the Committee has been commenting on the situation of indigenous communities in the Chaco region and reported abusive pay practices which are linked to suspected debt bondage and forced labour situations. In its latest report, the Government essentially reproduces the information communicated in its 2009 report and provides no new information with respect to the Committee's comments with the exception of aggregate statistics concerning labour inspection visits carried out in 2011. *The Committee accordingly asks the Government to take the necessary measures as a matter of priority in order to: (i) bring agricultural workers within the scope of application of the Convention, so as to enjoy with respect to their wages the protective coverage of the Labour Code; (ii) ensure that full effect is given to the requirements of Article 4(1) of the Convention regarding payment of wages in the form of alcohol or drugs; and (iii) properly investigate and effectively prevent and punish any pay practices in relation to indigenous workers in the Paraguayan Chaco region which would not comply with the following requirements of the Convention: Article 3 (payment of wages in legal tender only, and not in vouchers or coupons), Article 6 (prohibition to limit in any manner the freedom of workers to dispose of their wages), Article 7 (prohibition of any coercion exerted to workers in relation to the use of works stores), and Article 12 (payment of wages at regular intervals). Furthermore, the Committee requests the Government to refer to its comments made under the Forced Labour Convention, 1930 (No. 29), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).*

## Philippines

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1953)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous comment, the Committee notes the Government's reference to Order No. 18-A of 14 November 2011 of the Department of Labour and Employment concerning Rules implementing sections 106–109 of the Labour Code. The Government indicates that a service agreement concluded under this Order between a principal employer (who may be any person or entity, including government agencies and government-owned and controlled corporations), and a contractor (defined as any person or entity engaged in a legitimate contracting or subcontracting arrangement providing either services, skilled workers, temporary workers, or a combination of services to a principal employer), must include a clause ensuring compliance with all the rights and benefits of the employees under the Labour Code, such as provision of safe and healthful working conditions, leave, rest days, overtime pay, 13th month pay, separation pay and retirement benefits.

The Committee observes, however, that Department Order No. 18-A does not pertain specifically to public procurement operations but rather to contracting and subcontracting arrangements in general and also that section 8 of the Order merely reaffirms that workers engaged under a service agreement enjoy the full coverage of the Labour Code in terms of wages, working time and social security benefits. As the Committee has indicated on numerous occasions, the fact that the general labour legislation is applicable to workers engaged in the execution of public contracts does not in any way exempt the Government from providing for the inclusion in public contracts of the labour clauses envisaged by the Convention. Such inclusion ensures the protection of workers in cases in which the legislation only establishes minimum conditions of work (e.g. minimum pay rates) which may be exceeded by general or sectoral collective agreements. Moreover, even if collective agreements were applicable to workers engaged in the execution of public contracts, the implementation of the Convention remains of full value because its provisions are designed precisely to ensure the specific protection needed by those workers. For example, the Convention requires the adoption by the competent authorities of measures, such as the advertisement of specifications, to ensure that tenderers have advance knowledge of the terms of the labour clauses. It also requires notices to be posted in conspicuous places at the workplace to inform workers of the conditions of work applicable to them. Finally, it provides for sanctions in the event of non-compliance with the terms of labour clauses, such as the withholding of contracts or the withholding of payments due to contractors, which may be more directly effective than those applicable for violations of the general labour legislation.

The Committee understands that the Government is currently considering the possibility of receiving technical assistance from the Office in the framework of a time-bound programme aimed at capacity building on international labour standards and reporting obligations. *The Committee hopes that the Government will seize this opportunity in order to formulate either legislative provisions or administrative instructions and circulars which would fully incorporate the provisions of the Convention into the domestic public procurement regulatory framework. The Committee requests the Government to keep the Office informed of any progress made in this regard.*

## Poland

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1954)**

*Article 12 of the Convention. Regular payment of wages – The wage arrears situation.* The Committee notes the detailed statistics on inspection results for the period 2011–12. According to this data, in 2011, out of 68.5 thousand employers inspected, 16.8 thousand were found to have breached the legislation on the protection of wages with a total amount of unpaid wages and other benefits of 138.8 million Polish Zloty (PLN) (approximately €33.8 million) concerning 82.2 thousand employees, and representing an average unpaid amount of PLN1,689 (approximately €412) per employee. The Government's report further indicates that the wage arrears situation affects numerous employment sectors, such as manufacturing, construction, education, public administration, culture and entertainment. In addition, following 1,420 targeted inspections carried out in 2011 and focusing on wage issues, holiday pay and overtime were not paid by 38 per cent and 34 per cent of the inspected employers respectively. The Government states that the level of irregularities remains similar to that of 2010, with more than one third of inspected employers failing to pay wages to employees, and one out of four employers not paying wages on time. The Government also indicates that given the scale of the problem, it was decided to intensify inspections targeted on payroll records and to ensure that such inspections constitute 10 per cent of the total number of inspections.

The Committee notes with **concern** that the most recent statistics provided by the Government demonstrate that the difficulties concerning the regular payment of wages persist unabated, while in some cases the situation has even worsened. The Committee notes, for instance, a report from the National Labour Inspectorate (PIP) providing information on compliance by Polish employers with the law on the payment of wages, according to which almost 19 per cent more employers were in arrears with payments in the first half of 2010 than in the first half of 2009, and the total overdue payments increased by almost 62 per cent between the first half of 2009 and the same period in 2010. *While noting the close monitoring of the situation by the inspection services and the reinforcement of controls, the Committee encourages the Government to pursue its efforts, including through the imposition of sufficiently dissuasive sanctions, in order to contain and progressively eliminate the widespread practices of non-payment or partial payment of wages which entail serious social consequences for thousands of workers and also important consequences for the national economy as a whole.*

As regards the situation in the health sector, the Committee notes the statistical information on labour inspection results in that sector for the period 2010–11. According to 2010 data, overtime was not paid in 36 per cent of inspected facilities (public and private) and it was underpaid in 24 per cent of inspected facilities. Similarly, in 2011, irregularities relating to the payment of wages were found in 19 per cent of inspected medical establishments while overtime was not paid in 56 per cent of establishments with employees working overtime. *Noting that health-care institutions continue to face considerable difficulties with wage debts, the Committee hopes that in the ongoing process of restructuring and reform of the health sector, the Government will give special attention to the settlement of all outstanding payments to health-care personnel and the elimination of the all too common pay irregularities observed in the sector.*

In addition, 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 2013.]*

## Portugal

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1983)**

*Articles 3 and 4(2) of the Convention. Elements to be taken into consideration in determining the level of minimum wages – Consultations with the social partners.* The Committee notes the observations made by the General Confederation of Portuguese Workers (CGTP) and the General Workers' Union (UGT) concerning the application of the Convention, which were attached to the Government's report.

The CGTP indicates that the purchasing power of the minimum wage evolved positively between 2007 and 2010, following the implementation of a tripartite agreement concluded in December 2006 concerning the mid-term evolution of the minimum wage. However, according to the CGTP, the economic crisis was cited in 2011 to justify non-compliance with this agreement, and the minimum wage was not adjusted in 2012, resulting in a significant drop in its purchasing power and the loss of a proportion of the accumulated gains made between 2007 and 2010. The CGTP considers that this development is particularly important because of the high number of workers being paid low wages, because the amount of the minimum wage is close to the poverty line, and because of the gap between the minimum wage amount and the

average wage in the private sector. The CGTP refers to Legislative Decree No. 143/2010 of 31 December 2010, which set the amount of the minimum wage for 2011 at €485 per month, while setting the objective of increasing the minimum wage to €500 following two evaluations which were due to take place in May and September 2011. The CGTP alleges that the planned evaluations did not take place and that the social partners were not consulted in May and September 2011. According to the union, it was only in May 2012 that the matter was discussed within the Standing Committee on Social Dialogue (CPDS), without any decision being taken regarding the adjustment of the minimum wage. The CGTP considers that the difficult economic context does not make revision of the minimum wage any less necessary. On the contrary, in addition to meeting the requirement of protection of the least paid workers, an increase of the minimum wage would constitute a means of fostering economic growth by supporting internal demand.

In its observations, the UGT also refers to the Government's decision to set the minimum wage at €485 for 2011, emphasizing that the Government based its decision on the economic policy conditions established in the Memorandum of Understanding (MoU) concluded with the troika (European Commission, European Central Bank (ECB) and the International Monetary Fund (IMF)). The UGT affirms that the evaluations planned under Legislative Decree No. 143/2010 were not conducted within the CPDS and that the amount of the minimum wage has been maintained at €485. It recalls that the Labour Code provides that the amount of the minimum wage shall be fixed annually by legislative means, after consultation of the CPDS, and alleges that it was only following pressure exerted by union representatives that the Government placed this matter on the work agenda of the CPDS, during a meeting which was only held in May 2012. Furthermore, according to the UGT, the Government merely informed the social partners at this meeting that the amount of the minimum wage would not be adjusted and would therefore be maintained at €485. The union considers that factors such as the needs of workers and the increase in the cost of living, and not just economic objectives, must be taken into account when fixing the minimum wage, as provided for by the Convention. The UGT considers that, in the current context of crisis, marked by the increase of poverty and exclusion, it is very important to take account of these factors. Like the CGTP, it considers that an increase in the minimum wage would have a positive impact on the internal market, this being a key element in a period of recession for reviving growth and developing or maintaining employment.

In its reply, the Government indicates that the high unemployment rate that currently exists in the country constitutes the main obstacle to increasing the minimum wage. The Government refers to a study published in September 2011 by the Universities of Porto and Minho, the conclusions of which report a negative impact on employment of the increases in the minimum wage since 2006, particularly for the most vulnerable categories of workers, and which emphasizes that immediately increasing the minimum wage to €500 would result in a reduction in the employment rate of between 0.01 and 0.34 per cent.

The Committee also notes a study published in January 2012 by the Bank of Portugal on the impact of the minimum wage on the lowest paid workers, which also underlines the negative impact on employment of the recent increases in the minimum wage and, because of the greater staff turnover in companies, their detrimental effect on productivity, training and corporate progress in the internal labour market. The Government further refers to the extreme fragility of the Portuguese labour market, which features a high rate of unemployment and a significant percentage of newcomers to the labour market who are earning the minimum wage. The Government indicates that the decision relating to the fixing of the minimum wage is preceded by a hearing held with the social partners within the CPDS. It explains that the amount of the minimum wage was frozen in 2012 in the context of the financial assistance programme which was the subject of the agreement between the Portuguese Government, the European Commission, the ECB and the IMF. However, the Government asserts that the above considerations do not mean that it considers this subject any less relevant and it has proposed to the CPDS, as follow-up, to conduct a study on the evolution of the minimum wage for 2013.

The Committee notes that the Government, faced with the worsening financial situation of the country, requested and obtained financial assistance from the European Union and the IMF, and that the MoU establishing an economic adjustment programme for the 2011–14 period was concluded on 17 May 2011. It notes that, under the terms of the MoU, the Government undertook, in return for the financial aid granted, to only make increases in the minimum wage if the latter were justified by changes that had occurred in economic and labour market terms, and only after the conclusion of an agreement to this end as part of a review of the financial assistance programme. The Committee notes that the Government, as part of the implementation of the MoU, decided to increase the amount of the minimum wage to €485 for 2011 – and not to €500, as had been agreed in a tripartite agreement concluded in 2006 – and to freeze this amount for 2012.

The Committee is fully aware of the significant economic difficulties currently faced by the Government and notes the conclusions of the economic studies attached to its report describing the negative impact on employment caused by the latest increases in the minimum wage. However, the Committee wishes to recall that “minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families”, as emphasized in the Minimum Wage Fixing Recommendation, 1970 (No. 135), which complements Convention No. 131. It notes from the information sent by the Government in its report that the percentage of full-time workers who are paid the minimum wage increased from 6 per cent in 2007 to 11.3 per cent in 2011, and that decisions taken with regard to the minimum wage therefore have an impact on a large number of workers.

The Committee recalls that *Article 3* of the Convention requires that the elements to be taken into consideration in determining the level of minimum wages must include not only economic factors, such as employment policy objectives,

but also the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups. The Committee further recalls that the Global Jobs Pact, adopted by the International Labour Conference in June 2009 in response to the global economic crisis, underlines the relevance of ILO instruments relating to wages, in order to prevent a downward spiral in labour conditions and build the recovery (paragraph 14), suggests that governments should consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability (paragraph 23), and asserts that, in order to avoid deflationary wage spirals, minimum wages should be regularly reviewed and adapted (paragraph 12).

The Committee considers that the fixing of fair minimum wages, in concertation with the social partners, constitutes a key element of the Decent Work Agenda and contributes to achieving the objectives of social justice and peace and the prevention of unfair competition, which the ILO has pursued since its creation. Moreover, as underlined by the Global Jobs Pact, the regular adjustment of minimum wages in the context of economic crisis can avoid deflationary wage spirals and promote economic recovery as a result of stimulation of demand. In any case, the Committee stresses the fundamental nature of the principle of full consultation and direct participation, on an equal footing, of the social partners in the application of the minimum wage fixing machinery. This principle should be observed under all conditions, since the implementation of an economic adjustment programme or, in more general terms, an austerity policy in response to a crisis situation cannot release governments from their responsibilities in this field. On the contrary, the principle of full consultation and direct participation of the social partners assumes particular importance in periods of economic and social crisis, owing to the considerable repercussions that decisions relating to the fixing and periodic adjustment of minimum wages are likely to have on economic policy, including employment policy, and the purchasing power of workers. Open and constructive social dialogue facilitates the adoption of balanced measures to ensure a fair division of the efforts to be made to overcome the crisis, thereby promoting support for reforms and the maintenance of social cohesion. ***The Committee therefore hopes that the Government will conduct useful and effective consultations with employers' and workers' organizations represented within the Standing Committee on Social Dialogue before taking any decisions regarding the possible readjustment of the amount of the minimum wage, and that it will take full account in its decision-making as much of the needs of workers and their families as of economic policy objectives.***

*Article 2(1). Binding force of the minimum wage.* The Committee refers to its previous comment, in which it noted that the penalties established by Act No. 35/2004 issuing implementing regulations for the Labour Code of 2003 did not apply to infringements of the provisions of this Act establishing minimum wage rates for apprentices, trainees and workers with reduced working capacity. It notes that the UGT asserts in its observations that Act No. 7/2009 of 12 February 2009 issuing the new Labour Code still makes no provision for penalties in the event of failure to apply the minimum wage applicable to apprentices, trainees and interns, which is 20 per cent lower than the minimum wage applicable to other workers. The UGT considers that section 275 of the Labour Code of 2009 should be amended in order to provide for specific penalties for failure to observe the minimum wage applicable to these categories of workers. ***The Committee requests the Government to specify what penalties are applicable for failure to comply with section 275(1) of the Labour Code. If such penalties are not provided for by the Labour Code, the Government is requested to indicate the measures that it is contemplating in order to ensure that the workers concerned are not paid wages lower than the minimum fixed by this provision.***

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Romania

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1973)**

*Articles 8 and 10 of the Convention. Deductions from wages – Attachment of wages.* The Committee notes the comments of the Federation of Free Trade Unions of the Chemical and Petrochemical Industries (FSLCP), which were received on 5 June 2012, concerning the application of the Convention. The FSLCP denounces the 25 per cent wage reduction which was decided by the Government in 2010 and which affects 1.3 million public sector employees as an abusive, illegal and inopportune measure. The FSLCP indicates that this austerity measure was introduced through Act No. 118/2010 without any prior consultations and contrary to the provisions of applicable collective agreements, and therefore amounts to a unilateral alteration of the terms of employment contracts of public employees in clear violation of *Articles 8 and 10* of the Convention. The FSLCP further indicates that the 25 per cent wage reduction across the public sector, which was initially introduced for a limited period of six months to restore budgetary stability, continues to apply more than two years after its introduction despite court decisions which have upheld public employees' claims and confirmed the obligation to return to the pre-2010 salary levels.

In its reply, the Government indicates that the budget expenditure for salaries of public employees is determined within the limits established by the financial agreement concluded with the International Monetary Fund (IMF) and Government priorities for fiscal consolidation measures. It also indicates that taking into account the evolution of macroeconomic indicators and the measures agreed with the international financial institutions, the Government initiated a real and transparent social dialogue with the social partners, and issued an *Emergency Ordinance approving measures for the recovery of the wage reductions made under Act No. 118/2010*. A first pay increase of 8 per cent was made in June

2012 and another increase of 7.4 per cent is planned for December 2012 aiming at restoring the public wage levels of June 2010. Finally, the Government makes reference to the Constitutional Court Decision No. 872 of June 2010 and the ruling of the European Court of Human Rights in the cases *Mihaies v. Romania* (44232/11) and *Sentes v. Romania* (44605/11), which upheld the legitimacy of pay cuts decided in pursuance of public interest imperatives. ***The Committee requests the Government to continue providing information on the progressive restoration of public wages to their pre-2010 levels in accordance with the abovementioned emergency ordinance and the Letter of Intent addressed to the IMF in June 2012.***

In addition, 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 2013.]***

## Rwanda

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1962)***

*Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee has been commenting for over 30 years on the Government's failure to enact legislation or adopt other measures with a view to implementing the basic requirements of the Convention. In its last report, the Government refers to Ministerial Order No. 5 of 13 July 2010 concerning written contracts of employment, which, however, bears little relevance to public contracts within the meaning of *Article 1(1)* of the Convention or to the labour clauses that public contracts should include as required under *Article 2(1)* of the Convention. The Committee once again recalls that the fact that the general labour legislation applies to workers engaged in the execution of public contracts, as provided for in section 96 of the Public Procurement Act of 2007, does not in itself give effect to *Article 2* of the Convention which requires the insertion, in all public contracts to which the Convention applies, of labour clauses ensuring that the workers concerned benefit from wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations.

As the Committee has pointed out on a number of occasions, the legislation to which the Government refers in most cases lays down minimum standards, for instance as regards wage levels, and does not necessarily reflect the actual working conditions of workers. Thus, if the legislation lays down a minimum wage but workers in a particular profession are actually receiving higher wages, the Convention would require that any workers engaged in the execution of a public contract – in the same area and for work of the same character – be entitled to receive the prevailing wage rather than the minimum wage prescribed in the legislation.

In other terms, the application of the general labour legislation is not sufficient to ensure the application of the Convention, in as much as the minimum standards fixed by law are often improved upon by means of collective agreement or otherwise. ***The Committee therefore asks the Government once more to take steps without further delay in order to bring the national legislation into conformity with the provisions of the Convention, especially as regards: the determination of the terms of the labour clauses to be included in contracts after consultation with organizations of employers and workers concerned (Article 2(3)); the dissemination of those clauses, by advertising specifications or otherwise, so that tenderers are aware of the terms of the clauses (Article 2(4)); the posting of notices in conspicuous places to ensure that workers are informed of the conditions of work applicable to them (Article 4(a)(iii)); and the system of adequate sanctions, by the withholding of contracts or of payments due, for failure to apply the provisions of labour clauses (Article 5). Moreover, noting that under the Public Procurement Act of 2007, the Rwanda Public Procurement Authority (RPPA) is responsible for regulating and monitoring all public procurement operations, the Committee requests the Government to provide detailed information on any measures taken or planned by the RPPA with a view to ensuring fair labour conditions for those engaged in the execution of public contracts.***

## Serbia

### ***Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2000)***

*Articles 1 to 5 of the Convention. Minimum wage fixing system.* The Committee recalls the comments of the Confederation of Autonomous Trade Unions of Serbia (CATUS), which were transmitted to the Government on 3 October 2011, concerning alleged abusive pay practices in five construction and road maintenance companies of the Nibens group. According to CATUS, lack of effective control and inspection have permitted these heavily indebted and recently privatized companies not to pay the minimum wage for months creating a critical situation for more than 5,000 workers.

In its reply, the Government indicates that very limited cases of non-payment or delayed payment of wages have been identified in three companies, "Kragujevac", "Beograd" and "Vojvodinaput Bačkaput", and administrative proceedings have been initiated by the inspection services. ***While noting the Government's explanations, the Committee would appreciate receiving more detailed information on the outcome of the proceedings against the enterprises concerned (amount of fines imposed, sums of wages recovered, etc.) as well as any other measures taken to prevent and punish infringements of the minimum wage legislation.***

Furthermore, the Committee notes the comments of the Trade Union Confederation (TUC) “Nezavisnost” which were attached to the Government’s report. The TUC “Nezavisnost” refers to problems in the practical application of the Convention such as abusive practices whereby employers decide to pay wages but not corresponding contributions, or inversely, to pay contributions but not the wages, and cases of employees who after having been paid the minimum wage are requested by the employer to return part of the amount received. The TUC “Nezavisnost” also indicates that the current minimum wage rate covers only one third of the average consumer basket and less than even the minimum consumer basket, and therefore the basic needs of workers and their families are not satisfied even when employers comply with the minimum wage legislation.

Moreover, the Committee notes the comments of the Confederation of Free Trade Unions, dated 31 August 2012 and transmitted by the Government on 30 October 2012. The Confederation of Free Trade Unions points to serious difficulties of enforcement and indicates that there are practically no sanctions for employers violating the minimum wage legislation. The Confederation also considers that the minimum wage is far from reflecting the real economic conditions and is not sufficient to cover the most basic subsistence needs of workers. *The Committee requests the Government to submit any comments it may wish to make in response to the comments of the TUC “Nezavisnost” and the Confederation of Free Trade Unions.*

## Sierra Leone

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (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 2 of the Convention. Insertion of labour clauses in public contracts. The Committee asks the Government to submit a detailed report on the state of national law and practice regarding labour clauses in public contracts in the light of recently introduced public procurement reforms, including the adoption of the Public Procurement Act, 2004.*

*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: 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.*

## Spain

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1971)

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* The Committee takes note of the observations of the Trade Union Confederation of Workers’ Committees (CC.OO.) set out in a communication of 13 August 2012. It notes that according to the CC.OO., Spanish legislation does not ensure implementation of the essential requirement set in the Convention, namely the inclusion of labour clauses in public contracts, in accordance with *Article 2(1)*. The Committee notes that the CC.OO. refers to section 84(2) of the Workers’ Statute as amended by Royal Legislative Decree No. 3/2012 of 10 February 2012 to establish urgent measures for the reform of the labour market and by the eponymous Act of 6 July 2012, No. 3/2012. According to this provision, enterprise agreements take priority over sectoral collective agreements applying at national, autonomous community or a lower level, in respect of the amount of the wage, the payment of overtime, special remuneration for shift work, and working time and its distribution. The CC.OO. considers that application of the Convention is thus not guaranteed since an enterprise may, provided it meets the statutory minimum standards, establish conditions of work which are lower than those set in sectoral collective agreements and thus fall far short of the Convention’s requirement that they be at least as favourable as those established for work of the same character in the trade or industry concerned in the same district.

In its reply, received on 20 November 2012, the Government expresses the view that the new regulations on collective bargaining deriving from the labour law reform of 2012 do not impact on the application of *Article 2(1)* of the Convention. Firstly, according to the Government, the primacy of enterprise agreements over sectoral agreements does not affect at all the existence of sectoral agreements. Secondly, the Convention offers three regulatory benchmarks for evaluating the working conditions of persons employed by a contractor who has been awarded a public contract: a collective agreement covering a substantial number of employers and workers, an arbitration award, and national laws.

The primacy attributed to enterprise agreements affects, therefore, only one of these benchmarks. The Government also indicates that all contractors, with respect to their employees, have to comply with obligations laid down by the labour legislation. This obligation is set out in most of the administrative specifications approved by the competent organs of the State, autonomous communities and local entities. Moreover, the Government refers to Royal Legislative Decree No. 3/2011 of 14 November 2011 regarding the consolidated text of the Public Contracts Act, section 60 of which prohibits persons who have been convicted for offences against workers' rights or who have been sanctioned for very serious violations in social matters to be parties to a public contract. The Government concludes that there is no special social legislation for enterprises which conclude contracts with the public administration, as the general legislation applies to them in all matters.

The Committee notes the adoption of Royal Legislative Decree No. 3/2011 which repeals in particular Act No. 30/2007 of 30 October 2007 on public contracts, to which the Committee referred in its previous comment. It observes, however, that this text, just like the previous legislation, does not give effect to the main provisions of the Convention, and, in particular, it does not require the insertion of labour clauses of the type prescribed by *Article 2(1)* of the Convention in all public contracts to which it applies. In fact, contrary to what the Government maintains, this provision does not offer an option to select among three different ways of regulating the working conditions for its implementation. In reality, what the Convention requires is that enterprises must provide workers engaged in the execution of public contracts with wages and other conditions of work which are at least as favourable as the highest standards established in the same region by collective agreement, arbitration award or legislation. When, as in the case of Spain, labour legislation only fixes minimum standards that are improved through collective bargaining, the application of the general labour legislation to the conditions of execution of public contracts is not sufficient to ensure the application of the Convention.

Furthermore, the collective agreements referred to in *Article 2(1)* of the Convention are those established for work of the same character in the district where work is carried on for the execution of the public contract, and applied to a substantial proportion of the employers and workers in the trade or industry concerned. In this regard, the Committee notes that under section 84(2) of the Workers' statute, as amended by Royal Legislative Decree No. 3/2012 and by Act No. 3/2012 of 6 July 2012, enterprise agreements may derogate from sectoral agreements with respect to, among others, wages and working time. The collective bargaining reform adopted in 2012 does not appear, therefore, to ensure the implementation of the Convention, in so far as an enterprise party to a public contract may conclude an enterprise agreement providing for less favourable working conditions than those fixed under collective agreements applicable to a substantial proportion of employers and workers in the sector of economic activity concerned.

The Committee also notes that under section 73 of Royal Legislative Decree No. 3/2011, contractors may, by means of a declaration before a judge or an administrative certificate, prove that they are not banned from being parties to a public contract by virtue of section 60 of the same Decree. It observes that this provision, even though it may be a useful tool to fight against infringements of the labour legislation, is not sufficient to ensure full conformity with the Convention. Firstly, as indicated above, labour clauses seek to ensure compliance not only with the labour legislation, but also with applicable collective agreements and arbitration awards. In addition, as the Committee has pointed out in its 2008 General Survey on labour clauses in public contracts (paragraph 118), the insertion of labour clauses in public contracts under the Convention goes beyond the aims of simple certification, as its purpose is to eliminate the negative effects of competitive tendering on the workers' labour conditions. The mere indication that the contractor concerned has no record of labour law violation in previously completed works is not sufficient to meet its requirements. In fact, certification offers some proof about tenderers' past performance and law-abiding conduct but carries no binding commitment with regard to prospective operations as labour clauses do.

***In light of the foregoing, the Committee is bound to conclude that the national legislation does not give effect to Article 2(1) of the Convention, and urges the Government to take without delay the necessary measures in order to bring the national legislation into conformity with the Convention. It requests the Government to keep the Office informed of any decision it intends to take in this regard.***

***[The Government is asked to reply in detail to the present comments in 2013.]***

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1971)**

*Article 3 of the Convention. Elements to be taken into consideration in determining the level of minimum wages.* The Committee notes the observations made by the Trade Union Confederation of Workers' Commissions (CC.OO.) and the General Union of Workers (UGT) in communications dated 13 and 31 August 2012, respectively. It notes that, according to the CC.OO., the purchasing power of the interoccupational minimum wage (SMI) has been decreasing every year since 2010 and the SMI has corresponded to an increasingly small proportion of the average wage since 2007. The CC.OO. recalls that the Spanish minimum wage is one of the lowest in the "EU15", without this situation being justified by differences in hourly productivity levels. It considers that the economic crisis cannot be used as a pretext for abandoning the objective of attaining a minimum wage corresponding to 60 per cent of the average wage, which is the percentage considered to be fair in the context of implementation of the European Social Charter. The CC.OO. is asking the Government to restore the loss in purchasing power of the SMI which has been recorded since 2010 and is calling for a reform of section 27 of the Workers' Statute in order to establish new criteria for fixing the amount of the SMI on an



annual basis. The Committee further notes that the UGT refers in its observations to the loss of purchasing power of the SMI since 2010, and the freeze of the amount of the SMI in 2012, as well as the increased gap between the SMI and the average wage.

The Committee notes that, in its reply to the observations made by the CC.OO. and the UGT, the Government provides information on the evolution of the SMI, the consumer price index (IPC) and the gross average wage between 2006 and 2011. The Government points out that, by virtue of section 27 of the Workers' Statute, the amount of the SMI is determined not only on the basis of the IPC but also other factors such as national average productivity, increased worker participation to the national revenue and the general economic environment. The freeze of the SMI for 2012 followed a period of six years of increases beyond the increase of the IPC but this tendency could no longer be maintained because of the economic crisis. Despite the small number of workers receiving the SMI, an increase of the minimum wage by 1 per cent has an impact of €57 million on the State budget because of the direct link between the amount of the SMI and the reference base for calculating social security contributions. Such an increase also results in an increase of the expenditure of the Wage Guarantee Fund by €3.066 billion and an increase of the expenditure related to unemployment benefits by €17.3 million.

The Committee notes that in its report on the application of the Convention, the Government also provides information on the evolution of the SMI since 2008, indicating that, at the time of the increase of the SMI in 2011, account was taken in particular of the economic recession and the need to pursue a moderate wage policy with a view to contributing to economic recovery and job creation. The Government also refers to a resolution adopted on 30 January 2012 by the Directorate-General of Employment, which registers an agreement for employment and collective bargaining for 2012–14 concluded by the Spanish Confederation of Employers' Organizations (CEOE), the Spanish Confederation of Small and Medium-Sized Enterprises (CEPYME), the CC.OO. and the UGT. This agreement provides, inter alia, for wage moderation in collective bargaining and defines the criteria to be used for this purpose.

Furthermore, the Committee notes that the European Committee on Social Rights considered in 2010 that the situation in Spain was not in conformity with the European Social Charter on the grounds that the minimum wage was clearly unfair, based on the statistical information published by the Organisation for Economic Cooperation and Development (OECD), according to which the SMI corresponded in 2010 to 35 per cent of the average wage for full-time workers. It further notes that Royal Decree No. 1888/2011 of 30 December 2011, fixing the interoccupational minimum wage for 2012 has maintained the amount of the SMI at the same level as that which was in force in 2011, as confirmed by the Government. This decision was justified, according to the preamble to the Royal Decree, by the economic context which made it preferable, for 2012, to adopt wage policies contributing to the priority objective of economic recovery and job creation.

While being fully aware of the major economic difficulties currently faced by Spain, the Committee considers that the fixing of minimum wages in concertation with the social partners and enabling workers to meet their needs as well as those of their families is a key element for decent work, particularly in periods of economic and social crisis. It refers, in this regard, to the Global Jobs Pact, adopted by the International Labour Conference in June 2009 in response to the global economic crisis, an instrument which underlines the relevance of ILO instruments relating to wages in order to prevent a downward spiral in labour conditions and build the recovery (paragraph 14). The Pact also suggests that governments should consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability (paragraph 23), and it provides that, in order to avoid deflationary wage spirals, minimum wages should be regularly reviewed and adapted (paragraph 12). ***The Committee hopes that the Government will endeavour to take full account of the needs of workers and their families, and not just the objectives of economic policy, when undertaking the annual adjustment of the minimum wage in future, avoiding depreciations in the purchasing power of the SMI, and that it will fully involve the social partners, on an equal footing, in decision-making in this field.***

Finally, with regard to the relationship between the SMI and social security contributions or benefits, the Committee had noted in its previous direct request that, by virtue of section 1 of Royal Legislative Decree No. 3/2004 of 25 June 2004, the SMI no longer served as a basis for calculating certain social benefits and had been replaced to this end by the public indicator of multiple effect income (IPREM). ***The Committee requests the Government to provide additional explanations on this point, in the light of the information that it has communicated concerning the budgetary impact of minimum wage increases.***

## Sudan

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (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:

*Article 3, paragraph 2(2), of the Convention. Consultation and participation of employers and workers.* The Committee has been commenting for many years on section 4 of the Wages and Conditions of Employment Tribunals Act of 1976 which, contrary to the Wages Tribunal Ordinance of 1952, does not provide for equal representation of employers' and workers' organizations in the wages tribunals. The Government has indicated on several occasions that, in practice, employers' and

workers' representatives have always participated in equal numbers in the operation of minimum wage fixing bodies but gave assurances that the relevant provision in the legislation would still be amended to give effect to the provisions of the Convention. In this regard, the Committee wishes to stress that the requirement for genuine and effective consultations with employers' and workers' organizations and their participation in equal numbers and on equal terms in the minimum wage fixing process is a key element of the Convention. ***The Committee trusts that the Government will provide in its next report full particulars on the effect given to the requirements of Article 3 of the Convention, in law and practice.***

In addition, the Committee notes that the information contained in the Government's reports is often fragmentary, undocumented and fails to give a comprehensive picture of the minimum wage system in the country. The Committee understands that minimum wage rates are fixed: (i) at the national level under the Minimum Wage Act of 1974, as amended, for enterprises employing more than ten employees; (ii) by wages tribunals under the Wages and Conditions of Employment Tribunals Act of 1976 for specific categories of workers; and (iii) through collective bargaining. The Committee also understands that the national monthly minimum wage is currently set at 200 Sudanese pounds (approximately US\$45). ***The Committee would be grateful if the Government would specify in its next report whether the different minimum wage fixing methods mentioned above are still in effect, and also provide copies of all relevant legal instruments establishing minimum wage rates currently in force.***

***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: 1970)**

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

*Articles 4, 6, 8, 10, 13 and 14 of the Convention. Revision of the labour legislation.* The Committee has been commenting for some years on numerous divergences that persist between the Labour Act 1997 currently in force and certain provisions of the Convention. In its last report, the Government confined itself to reiterating that a tripartite committee had been set up to prepare a new consolidated draft Labour Code and that technical assistance had already been received from the Office to this effect. ***The Committee asks the Government to keep the Office informed of the revision process and to transmit a copy of the new draft Labour Act, once it has been finalized. In particular, the Committee asks the Government to indicate whether the new labour legislation is expected to extend its coverage to agricultural and other categories of workers currently excluded, and how it is intended to give effect to the specific requirements of Articles 4 (partial payment of wages in kind), 6 (freedom of workers to dispose of their wages), 8 (deductions from wages based on individual agreement), 10 (conditions and limits of attachment of wages), 13 (place of wage payment) and 14 (notification of wage conditions and statement of earnings) of the Convention.***

The Committee recalls, in this connection, that the General Survey of 2003 on the protection of wages contains documented information and practical guidance as to how legislative conformity with the Convention may be attained. It also recalls that the Government may continue to draw upon the technical advice and expertise of the Office on these matters, if it so wishes.

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

## **Suriname**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1976)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous observations drawing attention to the absence of implementing legislation, the Committee notes the Government's reference to the standards for the procurement of works (AWS 1996), the standards for the administrative execution of works (UWS 1996), and the standards for the procurement of services (ADS 1996). These rules address in part the working conditions applicable to workers engaged in the execution of public contracts, but, as the Government's report indicates, they do not expressly provide for the inclusion of labour clauses such as those prescribed by the Convention. The rules merely confirm the applicability of the general labour legislation to public procurement operations, which in itself is not sufficient to meet the requirements of this Article of the Convention, as the Committee has been pointing out for a number of years.

In this connection, the Committee notes the loan contract concluded in 2011 with the Inter-American Development Bank to assist the reform effort in the area of, among others, public procurement. The Committee also notes that the programme is planned to address identified weaknesses of the public procurement system, such as an outdated, disperse and incomplete legal framework characterized by a multiplicity of legal instruments and lack of clarity. The programme aims at the adoption of a new institutional framework in accordance with best international practices, the development of standardized procurement processes and procedures, including regulations, guidelines and handbooks, and the preparation of a legislative proposal to be submitted to the National Assembly to unify and consolidate in law the principles and key regulations developed during the programme. ***Considering that this reform process offers a clear opportunity to adopt laws and regulations giving full effect to the provisions of the Convention, the Committee hopes that the Government will take all the necessary measures in a timely manner to ensure that the legislative text to be developed through the Public Capital Expenditure Management Programme financed by the Inter-American Development Bank complies with the standards set out in the Convention.***

## Turkey

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1975)

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 3 of the Convention. Coverage and determination of minimum wage levels.* The Committee notes the comments made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-IS) concerning the application of the Convention.

TISK continues to consider inadvisable to bring home-based trades within the scope of the minimum wage legislation. Not only is it impossible to determine the minimum wage for piecework, bearing in mind that home working trades are usually engaged in piecework, but it is also not always clear whether those working at home are self-employed or parties to an employment relationship. As regards the periodic readjustment of the minimum wage, TISK maintains that other economic factors apart from the inflation rate should be taken into consideration, such as for instance the economic crisis, market slowdown, decline in productivity, and increased unemployment. TISK suggests that lower minimum wages should apply to young persons as from the age of 20 rather than the age of 16 in an effort to prevent the growing youth unemployment. Finally, TISK considers that the fight against the informal economy would need lower taxation, simplifying bureaucracy and additional incentives for formal employment.

TÜRK-IS believes that the level of the minimum wage is far from adequate to provide a humane standard of living and that the country's economic situation is used as an excuse for keeping the minimum wage exceptionally low. The workers' organization also states that while the economy has grown by 35 per cent over the past four years, workers remunerated at the minimum pay rate have not been able to share any concrete benefits. According to statistics of the social security institution, two out of every five formal workers are paid at the minimum wage. Moreover, TÜRK-IS alleges that at present the minimum wage can hardly cover 64 per cent of the hunger level and 20 per cent of the poverty level, which means that a working family receiving the minimum wage can eat healthily for just 19 days and can enjoy a decent standard of living for only six days per month. Finally, TÜRK-IS draws attention to the homeworking trades which are not protected by minimum wage legislation and also to the important ongoing problem of informal employment. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of TISK and TÜRK-IS.*

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 Clauses (Public Contracts) Convention, 1949 (No. 94)** (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:

*Articles 1 and 2 of the Convention. Labour clauses in public contracts.* The Committee notes the comments made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-IS) concerning the application of the Convention. TISK refers to some new provisions introduced in section 2 of Labour Act No. 4857 by virtue of Act No. 5538 of 1 July 2006, according to which workers employed in the execution of a public contract may not be appointed to a position of the contracting public authority or have access to any benefits and entitlements provided to the employees of the contracting public authority. Under the same provisions, public contracts for services may not contain provisions which empower the contracting public authority to recruit or terminate the employment of workers or which guarantee continued employment to workers engaged in the performance of a public contract. In this connection, TISK admits that the new provisions were introduced in order to prevent the malpractices experienced under the previous Labour Act No. 1475, but considers the provisions in question to be unconstitutional and to have rendered the system of public contracting impossible to manage. For its part, TÜRK-IS states that the newly added paragraphs in section 2 of the Labour Act contravene the standards set out in the Convention without further elaborating. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of TISK and TÜRK-IS.*

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.*

### **Protection of Wages Convention, 1949 (No. 95) (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:

The Committee notes the information contained in the Government's detailed report and its attachments, in particular the comments made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-IS) on the application of the Convention. It also notes the comments made by the Confederation of Turkish Public Employees Trade Unions (KAMU-SEN), which were appended to the Government's report received in October 2003. The Committee further notes the adoption of the new Labour Law No. 4857 of 22 May 2003 revising the old Labour Law No. 1475 of 25 August 1971.

*Article 12, paragraph 1, of the Convention. Non-payment or delayed payment of wages.* The Committee notes that employers' and workers' organizations have been commenting for a number of years on problems concerning the non-payment or delayed payment of wages. TÜRK-IS indicates that the amounts owed to workers in the form of unpaid or only partially paid wages and social benefits and bonuses are reaching high levels. The situation affects considerable numbers of workers in the private sector but also municipal workers. For KAMU-SEN, the dramatic drop in real wages, mainly because of inflation and increasing production costs, pushes workers to depression. TISK believes that excessive financial obligations, such as high tax and social insurance contributions imposed on registered workers and employers, increase the difference between gross and net wages, and diminish the country's competitiveness. In fact, Turkey has been on top of the OECD list of countries with the highest

labour employment costs: 42.8 per cent of average labour costs have consisted of payroll taxes since 2006, as compared to 27.5 per cent for other OECD countries and 11.7 per cent for EU countries. For TISK, the heavy tax and social insurance burden boost the informal sector and render the economy less competitive.

Concerning these points, the Government states that the delays in the payment of wages are caused mainly by the economic crisis affecting all enterprises or organizations, private or public. The Government also refers to sections 33 and 34 of the new Labour Law as measures to address this situation through legislation. Section 33 establishes a Wages Guarantee Fund within the Unemployment Insurance Fund, which is financed by 1 per cent of the contributions to the unemployment insurance by the employers. Section 34 provides that workers may at their discretion decide not to work if the employer does not pay the wage due within 20 days of the pay day, which must not be construed as a strike or be considered as a ground for termination of the worker's employment contract, and that an interest at the highest commercial rate must be applied to the sum of wages due to the worker. As regards the situation of wage payment in the public sector, the Government makes reference to the results of a survey by the Ministry of Interior showing that there are nearly 5,500 public officers affected across 188 municipalities involving an amount of approximately 5,781,147 new Turkish liras (approximately US\$4.6 million). In this connection, the Government indicates that the legislation regulating the finance and personnel affairs in public administration, such as Act No. 5018 concerning the administration of public finance and audit, and Act No. 5620 on the transfer to permanent posts or contractual personnel status of workers temporarily employed in the public administration, ensures that wages of public officers are paid regularly and in full. The Committee recalls in this connection paragraphs 358 and 366 of its General Survey of 2003 on the protection of wages, in which it pointed out that whatever the intricate causes of the problem of wage arrears, the deferred payment of wages is part of a vicious circle that inexorably affects the entire national economy. *The Committee hopes that the Government will continue its efforts for devising appropriate solutions to the problem of delayed or non-payment of wages through social dialogue and better implementation of the labour legislation. The Committee accordingly requests the Government to closely monitor the situation and continue to provide up to date information on the number of workers and types of enterprises affected by accumulated wage arrears and any progress made in settling outstanding payments in both the public and private sector. Finally, the Committee requests the Government to transmit any comments it may wish to make in reply to the latest observations of TISK and TÜRK-İS.*

*Article 15. Enforcement and legal remedies.* According to TÜRK-İS the difficulties experienced in the protection of workers' wages are mainly due to the considerable difference between the legal provisions in place and their practical application, or in other words to the lack of effective penalties. In contrast, TISK considers that legal provisions on penalties are sufficient. It also states that the increase of administrative fines would not safeguard the full respect of the wage legislation, as long as the employers are deprived of their financial strength to secure resources for the payment of wages. In this regard, the Government refers to section 102 of the new Labour Law prescribing an administrative fine of 100 Turkish New Lira (TRY) (approximately US\$83), to be annually readjusted under section 17 of Act No. 5326 of 30 March 2005, for failure to pay the wages in full. The Government explains that based on these provisions, an employer would currently be liable to a fine of TRY167 (approximately US\$138) for each month of non-payment or underpayment of the worker's wage. It also refers to the possibility to file a complaint with the labour courts under section 61 of Act No. 2822 on collective labour agreements which provides for a lawsuit for payment that carries payment of interest at the highest commercial rate. *The Committee would be thankful to the Government for providing statistical information on the number of wage-related cases heard by labour courts and the amounts of wages recovered.*

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.*

### **Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (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:

*Articles 1 and 4 of the Convention. Scope of application and enforcement of minimum wage in agriculture.* The Committee notes the comments made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İS), concerning the application of the Convention.

TISK basically reiterates points it has raised in earlier observations, in particular that bringing partially agricultural enterprises and agricultural workers within the scope of the Labour Law creates problems of application and that a separate legislation would be preferable due to the special characteristics of agricultural work and the social structure in the country.

As for TÜRK-İS, it considers that the measures for control, inspection, and sanctions in the agricultural sector are completely inadequate and, as a result, large numbers of agricultural workers are remunerated at rates below the minimum wage. TÜRK-İS calls, accordingly, for better implementation of *Article 4* of the Convention. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of TISK and TÜRK-İS. It would also appreciate receiving a copy of the Statute concerning work regarded as industry, commerce, agriculture and forestry of 28 February 2004 and of the Statute concerning working conditions of workers in agriculture and forestry of 6 April 2004 to which reference was made in TISK's comments.*

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.*

## **Uganda**

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)**

*Articles 1 to 4 of the Convention. Establishment and operation of minimum wage-fixing machinery.* The Committee has been commenting for several years on the need to readjust the national minimum wage rate which remains unchanged since 1984 at the level of 6,000 Uganda shillings (UGX) (approximately US\$2.50) per month. The Committee

has been drawing the Government's attention to the fact that, in order to be able to fulfil a meaningful role in social policy, the minimum wage should not be allowed to fall below a socially acceptable subsistence level, and that it should maintain its purchasing power in relation to a basic basket of essential consumer goods. Recalling that the Minimum Wages Board last met in 1995 and recommended a monthly minimum wage of UGX75,000, which, however, has never been implemented, the Committee has urged the Government on numerous occasions to take all appropriate measures to reactivate the minimum wage-fixing process based on tripartite consultations. In its last report, the Government limits itself to indicating that steps have been taken in this direction and that at present discussions focus on the composition of the Minimum Wages Board. The Committee understands, however, that the question of setting a new minimum wage has recently been the subject of strong trade union campaigns and vivid parliamentary debate but no concrete progress has been made regarding the revision of the minimum wage. ***Under the circumstances, the Committee once again urges the Government to take prompt action in order to ensure the reinstatement and proper functioning of the minimum wage-fixing machinery in accordance with the letter and the spirit of the Convention, and recalls that it may draw upon the technical assistance of the Office if it so wishes.***

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Ukraine

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)**

*Article 12(1) of the Convention. Payment of wages at regular intervals – Wage arrears situation.* The Committee notes that according to the Government's report, the total amount of wage arrears as of 1 June 2012 stood at 999.9 million Ukrainian hryvna (UAH) (approximately €94 million), which represents a 42.5 per cent decrease from UAH1.79 billion in 2010. The total wage arrears owed to workers in economically active enterprises is UAH479.3 million (approximately €45 million), that is a 58.7 per cent decrease from March 2010, whereas UAH520.5 million (approximately €49 million) are owed to enterprises undergoing procedure to restore solvency or declare bankruptcy. Among economically active enterprises, the manufacturing sector has the highest amount of accumulated wage arrears representing approximately 61.4 per cent of the total amount. Other sectors experiencing serious problems of wage arrears include engineering, construction, transport and communications. Between March 2010 and June 2012, wage arrears declined by 48.3 per cent in the coal mining industry and currently represent 10 per cent of the total wage arrears in economically active enterprises. The Committee notes, in this respect, the comments of the Confederation of Free Trade Unions of Ukraine (KVPU) received on 31 August 2012 describing outstanding wage arrears in coal companies.

*Monitoring of the situation – Collection of data.* Further to its previous observation, in which the Committee noted that the State Statistics Committee excluded enterprises with less than 50 employees and that there was a lack of confidentiality in the process of collecting reports from enterprises, the Committee notes the Government's indication that the State Statistics Committee now collects data concerning enterprises with more than ten employees and that, pursuant to section 22 of the Act on State statistics, amended on 13 January 2011, the statistics bodies are prohibited from sharing information aside from certain exceptions, including statistical information on levels of wage arrears.

*Activities of labour inspection services.* According to the statistical information provided by the Government, in 2011, 7,312 inspections were carried out at 4,997 enterprises experiencing wage arrears problems, and as a result, 1,794 fines were issued for a total amount of UAH3.8 million (approximately €360,000) and 299,000 employees received the money they were owed. Similarly, in the first six months of 2012, 2,651 inspections were conducted at 2,029 enterprises, following which 882 fines were imposed amounting to UAH488,200 (approximately €46,250) and 116,500 employees received some or all of the money they were owed.

*Bankruptcy proceedings.* Further to its previous observation, the Committee notes the Government's statement that it is engaged in ongoing legislative work aimed at ensuring first-rank priority for wage claims in the context of insolvency or bankruptcy proceedings. The Government indicates that a law amending the Act on restoring the solvency of the debtor or declaring it bankrupt, adopted in December 2011 and taking effect in January 2013, will make it possible to reduce wage arrears in bankrupt enterprises. The Committee notes, in this respect, section 241(5) of the new draft Labour Code, which provides that workers' wage claims in insolvency or bankruptcy proceedings are priority debts ranking higher than all other claims, including secured claims, and claims of State social insurance institutions and tax authorities. The Committee further notes the Government's indication that it has established a special working group with the participation of representatives of employers' and workers' organizations and academics to examine the possibility of setting up a wage guarantee fund.

*Other measures.* The Committee notes that several initiatives have been taken to follow up on the recommendations of the ILO technical assistance mission of May 2011. In this respect, the Government's report outlines various activities, including conferences among high-level government representatives, a sectoral conference and conferences involving the social partners and central and local authorities. Within enterprises, members of management are responsible for conducting weekly wage arrears reports which are then communicated to relevant commissions and local executive authorities. Similarly, interim commissions operate throughout the administrative regions to hear reports from directors of enterprises that have wage arrears and, between March 2010 and June 2012, those interim commissions

held 25,701 separate sessions, cautioned 76,005 directors with disciplinary charges, terminated 487 contracts and took 20,480 other measures putting pressure on enterprises.

The Committee is encouraged that the Government continues to address the issue of wage arrears as a matter of priority in full awareness of the scale and complexity of the problem. The Committee is also encouraged that according to official statistics the overall amount of wage arrears continues to be on a decreasing trend. Moreover, the Committee notes that the Deputy Minister of Social Policy and the social partners in meetings they had with ILO officials in July 2012 confirmed the positive results and the new measures taken to resolve the issue of wage arrears. ***The Committee hopes that the Government will pursue its efforts in a sustained and resolute manner in order to deliver large parts of the national economy from the vicious circle of wage arrears. The Committee also hopes that Government action will focus, among others, on the revision of bankruptcy law, the establishment of a wage guarantee institution, the eradication of the practice of “envelope wages”, the improvement of data collection and the reinforcement of the human resources of the labour inspectorate. The Committee accordingly requests the Government to keep the Office informed of any progress made in these matters.***

## United Kingdom

### Bermuda

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**

*Article 2 of the Convention. Insertion of labour clauses into public contracts.* In its previous comment, the Committee asked the Government to clarify whether the administrative instructions which had been adopted on 29 December 1962 and which gave effect to the requirements of the Convention, still remained in force or whether they had been amended or replaced by new texts.

In its latest report, the Government indicates that it is unable to answer definitively whether such instructions are still in force. It also indicates that the Good Governance Act 2011, which is operative as from 21 October 2011, established the Office of the Project Management and Procurement within the Ministry of Finance to be responsible for managing the selection and award of government contracts in accordance with principles of transparency and best practice. The Government further states that the Contracts and Compliance Manager within the Office is currently preparing contract templates for public contracts which will include social, economic and environmental criteria in line with international practice. Moreover, the Government states that the current form of contracts used for construction projects has been in use for some time and has been drafted in compliance with internationally recognized standards, such as the International Federation of Consulting Engineers (FIDIC).

While noting these explanations, the Committee wishes to recall the main objective of the Convention which is to promote good governance and socially responsible public procurement by requiring contractors to apply locally established prevailing pay and other working conditions as determined by law or collective agreement. The Convention proposes a common level playing field – in terms of labour standards – for all economic actors so as to ensure fair competition. By requiring all bidders to respect, as a minimum, certain locally established standards, wages, working time and working conditions may not be used as elements of competition and consequently no downward pressure on wages and working conditions may be exerted. ***Noting that a code of practice for Project Management and Procurement to be followed by all public officers concerned with public procurement operations is currently under preparation under the Good Governance Act 2011, the Committee hopes that the Government will seize this opportunity in order to formulate standard bidding documents incorporating labour clauses for all public contracts (whether for construction works, goods or services) fully aligned with the requirements of Article 2 of the Convention. The Committee requests the Government to keep the Office informed of any progress made in this regard and to transmit a copy of the code of practice once it is adopted.***

## Uruguay

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1954)**

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* Further to its previous comment, the Committee notes the Government's indication that Decree No. 475/005 of 14 November 2005, which the Committee has previously found to conform fully to the provisions of *Article 2* of the Convention, is the main legal text implementing the Convention. The Government adds that Act No. 18.098 of 12 January 2007, which narrows the scope of labour clauses to only the observance of wage rates fixed by wage councils, should not be deemed to supersede Decree No. 475/005.

While noting these clarifications, the Committee once again draws the Government's attention to the fact that both the abovementioned texts apply only to public contracts for services whereas the Convention requires labour clauses to be inserted in all procurement contracts whether for works, goods or services. ***Recalling that the scope of the Convention is not in any manner limited to services contracts, the Committee asks the Government to take the necessary measures to***

ensure that the scope of the provisions of Decree No. 475/005 are extended to cover all types of public contracts. The Committee also asks the Government to amend Act No. 18.098 so as to bring it fully into line with the requirements of this Article of the Convention.

## Bolivarian Republic of Venezuela

### Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1944)

*Article 3(2) of the Convention. Minimum wage fixing machinery and consultations with employers' and workers' organizations.* The Committee notes the comments of the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) of 14 September 2011 transmitted to the Government on 27 September 2011. It also notes the additional comments of FEDECAMARAS, supported by the International Organisation of Employers (IOE), which were received on 31 August 2012 and forwarded to the Government on 24 September 2012. The Committee further notes the comments of the Independent Trade Union Alliance (ASI), which were received on 29 August 2011 and 14 August 2012 and transmitted to the Government on 22 September 2011 and 29 August 2012, respectively. It also notes the Government's replies of 12 November 2012 to the comments of FEDECAMARAS and ASI. Both organizations basically reiterate the allegations reflected in previous communications concerning the absence of meaningful social dialogue in the country and the annual readjustment of the minimum wage by the Government in a unilateral manner.

More concretely, FEDECAMARAS indicates that the minimum wage increase for 2012 was approved through Presidential Decree No. 8920 of 24 April 2012 without consulting the representative employers' organizations or the National Tripartite Commission, which contravenes sections 167–169 of the Basic Labour Act in force at that time. FEDECAMARAS adds that the National Tripartite Commission has not been convened for the last ten years. It considers that the method of consultation used by the Ministry of Labour and Social Security, that is inviting comments within a short time limit of 15 days, does not constitute genuine social dialogue and violates the Convention. FEDECAMARAS also indicates that the committee established for drafting the new Organic Labour Act (LOTTT) (*Official Gazette* of 7 May 2012) did not adequately represent the employers' organizations. For its part, ASI denounces the Government's clear tendency to set labour policies, including wage policy, without considering the views of employers' and workers' representatives, and indicates that the minimum wage legislation does not define the criteria for the determination of minimum wage levels nor does it set any limits to the Government's discretionary powers in this regard. ASI also alleges that the current minimum wage covers only 43.9 per cent of the basic food basket (*canasta alimentaria normativa*). According to statistics provided by ASI, from 1999 to 2010, inflation rose by 747 per cent while in the last 12 months prices have increased by 24.6 per cent. The diminishing purchasing power of the minimum wage affects a large number of people as it is estimated that 21.1 per cent of all workers are paid at the minimum wage rate.

In its report, the Government refers to article 91 of the Constitution which provides for the annual readjustment of the minimum wage for workers in the public and private sectors taking into account the cost of the basic food basket, and indicates that the Constituent Assembly of 1999 drafted this article considering the views of workers' representatives who denounced the lack of effectiveness and representativeness of the National Tripartite Commission. The Government indicates that the new LOTTT has been adopted following social dialogue with employers' and workers' representatives. The Committee notes that this Act no longer makes reference to the National Tripartite Commission as the consultative body for fixing minimum wages. It also notes that under section 129 of the new LOTTT, the Government fixes by decree the minimum wage on a yearly basis and for this purpose it invites different social organizations and socio-economic institutions to make known their views. The Government's report specifies that, in practice, every year in January, as many as six trade union confederations and 32 trade union federations as well as five important employers' organizations are consulted, while the Central Bank and the Ministry of Finance are requested to prepare economic reports. The views of workers' and employers' representatives are collected through the web page of the Ministry of Labour, while a committee designated by the President is responsible for preparing a summary of the opinions expressed and the economic reports submitted, prior to the promulgation of the decree fixing the minimum wage by the President. Moreover, the Government indicates that, as of August 2012, the minimum wage of 2,047 bolivar (approximately US\$476) plus the food ticket exceeded the value of the basic food basket of 1,835 bolivar (approximately US\$427). The Government further indicates that, according to the labour force surveys, there are on the average two workers per household, and therefore the income per household is higher than the minimum wage. The Government finally points out that the minimum wage was raised in 2012 by 32.3 per cent, while the inflation rate was 18 per cent.

While noting the Government's explanations, the Committee wishes to recall once again the fundamental importance it attaches to real and good faith consultations with the social partners for the effective operation of the minimum wage fixing process. As the Committee has pointed out on numerous occasions, "consultation" has a different connotation from mere "information" and from "co-determination". In order to be meaningful, consultations must give employers' and workers' representatives ample opportunity to express their views, and these views must be carefully considered, even if decision-making power ultimately lies with the Government. *Noting that the new LOTTT of 2012 introduces a major change in the nature and form of the minimum wage fixing machinery by formally abolishing the*

*National Tripartite Commission, heretofore responsible for making concerted recommendations on the adjustment of the minimum wage, the Committee requests the Government to provide more detailed information on the exact content and views expressed during the consultations prior to that legislative change.*

## Yemen

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (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 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous comments, the Committee notes the adoption of Act No. 23 of 14 August 2007 on bidding, outbidding and government warehouses which replaces Act No. 3 of 1997 on the same. The Act regulates, in particular, the award, execution and supervision by the Supreme Commission for Tenders of all public tenders on the basis of equality of treatment and transparency. However, the Committee notes that, contrary to the indications of the Government, Act No. 23 does not provide for the insertion of labour clauses as prescribed by this Article of the Convention. In this connection, the Committee wishes to refer to paragraphs 176–177 of its General Survey of 2008 on labour clauses in public contracts in which it pointed out that “the Convention has a very simple structure, all its provisions being articulated around and directly linked to the core requirement of *Article 2(1)*, that is the insertion of labour clauses ensuring favourable wages and other working conditions to the workers concerned. As a result, in case the national legislation makes no provision for the specific type of labour clause and in the specific terms set out in *Article 2(1)* of the Convention, the application of the remaining *Articles 3, 4 and 5* becomes without object and thus cannot be considered separately.” The Committee went on to observe that “by aligning contract standards to the highest prevailing standards, by excluding the lowering of those standards through subcontracting, and by incorporating those principles into the standard clauses of each and every public contract falling within its scope, the Convention guarantees that public procurement is not a terrain for socially unhealthy competition and can never be associated with poor working and wage conditions.” *The Committee hopes that the Government will take the necessary steps without further delay in order to ensure the application of the basic requirement of the Convention and recalls that it may draw on the expert advice of the Office to this effect.*

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

### **Minimum Wage Fixing Convention, 1970 (No. 131) (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 4 of the Convention. Full consultation and direct participation of employers' and workers' organizations.* The Committee recalls its previous comments in which it noted that, even though the minimum wage set for public employees (20,000 rials or approximately US\$100 per month) may also apply to workers of the private sector in accordance with section 55(1) of the Labour Code, there is no institutionalized mechanism for fixing and revising minimum wages through a consultative process sufficiently representative of employers' and workers' interests. In its last report, the Government indicates that the implementation of the national strategy on wages has been postponed due to the current economic situation. The Government also states that the establishment of the tripartite Labour Council, which is provided for in section 11(1) of the Labour Code, has been deferred in view of the proposed amendment of the Labour Code. Accordingly, the Committee notes with *regret* that no progress has been made as regards the implementation of the Convention, either in law or in practice. *The Committee urges the Government to take, without further delay, all necessary measures in order to set up a minimum wage fixing mechanism based on effective and genuine tripartite consultations. It asks the Government to keep the Office informed of any developments concerning the reactivation of the national strategy on wages, the eventual establishment of the Labour Council and the announced amendment of the Labour Code.*

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

## Zambia

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1979)**

*Article 12 of the Convention. Regular payment of wages.* Further to its previous comments concerning accumulated wage debts by local councils in all nine provinces of the country, the Committee notes the statistical information provided by the Government according to which the overall councils' debt, including unpaid salaries, statutory obligations and other creditors, as of December 2011, stood at 671.7 billion Zambian kwacha (approximately US\$127 million). Contrary to the data included in the Government's previous report, the latest statistics contain no clear indication as to the total amount of wage arrears and the number of months involved, making it impossible for the Committee to assess the evolution of the situation; nor does the Government's report provide any details on similar difficulties experienced in other economic sectors, such as health care and education. *The Committee accordingly asks the Government to communicate together with its next report a detailed account on the problems of non-payment or delayed payment of wages encountered in the country, including up-to-date statistics on the total amount of outstanding payments, the principal sectors affected, the number of workers concerned and the average length of time involved in late payments, and any additional measures taken in order to resolve these problems.*



## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 26** (Argentina, Austria, Barbados, Bulgaria, Chad, China, China: Macau Special Administrative Region, Democratic Republic of the Congo, Dominican Republic, Germany, Ghana, Grenada, Hungary, Ireland, Lesotho, Luxembourg, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, New Zealand, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, Slovakia, Solomon Islands, South Africa, Switzerland, Togo, Tunisia, Turkey, United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Montserrat, Zimbabwe); **Convention No. 94** (Antigua and Barbuda, Bosnia and Herzegovina, Dominica, France: French Polynesia, Grenada, Guyana, Kenya, Malaysia: Sabah, Malaysia: Sarawak, Mauritania, Mauritius, Netherlands: Curaçao, Netherlands: Sint Maarten, Nigeria, Saint Vincent and the Grenadines, Solomon Islands, Swaziland, Syrian Arab Republic, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Turkey, Uganda, United Kingdom: Anguilla); **Convention No. 95** (Argentina, Austria, Azerbaijan, Bahamas, Barbados, Botswana, Brazil, Bulgaria, Burkina Faso, Chad, Democratic Republic of the Congo, Dominican Republic, France, France: French Polynesia, France: New Caledonia, Grenada, Guinea, Guyana, Hungary, Lebanon, Madagascar, Malaysia, Mali, Malta, Mauritius, Mexico, Republic of Moldova, Netherlands: Curaçao, Netherlands: Sint Maarten, Nicaragua, Niger, Nigeria, Norway, Panama, Philippines, Poland, Portugal, Romania, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Suriname, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, Togo, Tunisia, Turkey, Uganda, United Kingdom: Montserrat, Uruguay, Bolivarian Republic of Venezuela, Yemen); **Convention No. 99** (Austria, Czech Republic, Germany, Hungary, Ireland, Kenya, Mauritius, Morocco, New Zealand, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Senegal, Seychelles, Slovakia, Tunisia, Turkey, United Kingdom: Anguilla, United Kingdom: Isle of Man, United Kingdom: Jersey, Zimbabwe); **Convention No. 131** (Antigua and Barbuda, Burkina Faso, France: French Polynesia, France: New Caledonia, Iraq, Japan, Kenya, Republic of Korea, Latvia, Lebanon, Lithuania, Malta, Mexico, Republic of Moldova, Montenegro, Nepal, Nicaragua, Niger, Romania, Slovenia, Sri Lanka, Swaziland, Syrian Arab Republic, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Ukraine, Uruguay, Zambia); **Convention No. 173** (Bulgaria, Burkina Faso, Chad, Latvia, Lithuania, Madagascar, Mexico, Slovakia, Slovenia, Spain, Switzerland, Ukraine).

The Committee noted the information supplied by the following State in answer to a direct request with regard to **Convention No. 95** (Netherlands).



## Working time

### Argentina

#### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1933)**

*Article 2 of the Convention. Daily and weekly limits of hours of work. The Committee requests the Government to refer to its comments made under Articles 3 and 4 of the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).*

#### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1950)**

*Articles 3 and 4 of the Convention. Daily and weekly limits of hours of work. The Committee notes the information provided by the Government in reply to the comments made in 2011 by the Confederation of Workers of Argentina (CTA) concerning alleged widespread working time irregularities in the commerce and road transport sectors. The Committee notes, in particular, the Government's reference to Decree No. 16.115/33 implementing Act No. 11.544 which reflects the provisions of Article 2 of the Hours of Work (Industry) Convention, 1919 (No. 1), concerning the variable distribution of working hours within a week and the averaging of hours of work in the case of shift work. The Government further refers to section 197 of Act No. 20.744 on labour contract which requires a minimum rest period of 12 hours between two consecutive working days, thus implying that no worker may be employed for more than 12 hours per day. In this respect, the Committee wishes to point out that Conventions Nos 1 and 30 allow the limit of eight hours a day and 48 hours a week to be exceeded only in very limited and clearly defined circumstances. For instance, Convention No. 1 prescribes an overall daily work limit of nine hours in the case of variable distribution of working hours within a week while Convention No. 30 provides that the maximum hours of work in the week may be so arranged that hours of work in any day do not exceed ten hours. Therefore, the "compressed work-week" arrangements (i.e. four consecutive 12-hour workdays followed by three days off) referred to in the comments of the CTA would seem to be incompatible with the requirements of the Convention. As the Committee has concluded in paragraph 213 of its General Survey of 2005 on hours of work, "it appears that in many cases compressed work-weeks are likely to be in contravention of the requirements of Convention No. 1, Convention No. 30, or both, in particular due to the number of daily hours which are typically worked under these arrangements". For example, compressed work-week arrangements, where work is performed by two teams in 12-hour shifts, would appear to be incompatible with the requirements of both Conventions Nos 1 and 30, because the daily work may exceed the nine-hour and ten-hour limits prescribed respectively. **The Committee accordingly hopes that the Government will consider measures to ensure that working time arrangements fully comply with the limit set out in Article 4 of the Convention. In addition, the Committee would appreciate receiving additional information on the levels of over-employment ("sobreocupación horaria") and any measures taken or envisaged for the protection of the workers concerned.***

### Costa Rica

#### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1982)**

*Articles 2 and 6(1)(b) of the Convention. Hours of work and overtime of bus drivers. The Committee notes the information sent by the Government and by the National Chamber of Transport in reply to the previous comment it made with respect to observations submitted by the Rerum Novarum Workers' Confederation (CTRN) on the working hours of bus drivers. It notes that the Government refers to its 2011 report on this matter and reaffirms that the CTRN's allegations are incorrect, recalling that any infringement of the legislation in force would be examined by the labour inspection services, regardless of any legal action taken. It indicates that in 2011 the National Directorate of Labour Inspection undertook 138 inspections in transport enterprises. No infringements were reported in 18 enterprises, and 87 per cent of the other 120 enterprises applied the measures requested by the labour inspector. The Committee also notes that, according to comments made by the National Chamber of Transport, in addition to the information contained in its communication of 24 November 2010, the practice whereby the driver had to clean the bus without being paid for these hours of work has fallen into disuse because the modernization of transport has resulted in specialized staff having to do this job.*

The Committee notes, however, that the CTRN renewed its allegations in a communication dated 30 August 2012, which included individual statements from bus drivers to the effect that they worked more than 12 hours on Sundays without being paid overtime. The CTRN also enclosed press cuttings referring to a strike organized by bus drivers employed by the company "Transportes Unidos la 400" in November 2011 to press their claims for sanitation facilities in bus depots, the payment of overtime, a lunch break and a stop to unofficial payments. According to this information, the strike was called off after an agreement had been reached to initiate negotiations on these matters with the participation of a representative from the Ministry of Labour and Social Security (MTSS). The Committee notes that, in a communication received on 22 November 2012, the Government indicated that it is conducting consultations with a view to submitting, the soonest possible, its reply to the comments of the CTRN. **Hoping to receive this response very shortly, the Committee**

*requests the Government to provide information, in particular, on the outcome of the negotiations conducted after the strike and on its impact on the working conditions of bus drivers employed by other companies. Furthermore, given that the CTRN's allegations seem serious and are backed up by testimonies of the workers concerned, the Committee asks the Government to take all the necessary measures in the immediate future to ascertain whether the provisions of the Convention are effectively enforced in practice in the case of bus drivers, and to provide detailed information on the outcome of these inquiries in its next report.*

## 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. *The Committee 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.*

## 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 that the Georgian Trade Union Confederation (GTUC), in a communication received on 21 September 2012, reiterates the observations that it made previously on the subject of the application of the Convention. The GTUC refers to the case of employees who work for years for the same employer on the basis of renewable one-month employment contracts and are thus never entitled to paid annual leave, in view of the fact that this entitlement takes effect after a period of service of 11 months. The Confederation adds that many employees are dismissed before being able to take their annual holiday with pay, without receiving any compensation from their employer for annual leave that was not taken, because of the absence of any legal provision giving effect to *Article 6* of the Convention. Finally, the GTUC criticizes the Government's policy aimed at totally deregulating the labour market and abolishing most labour market institutions, including the labour inspectorate.

The Committee notes that, in reply to its previous observation, the Government indicates that the statements by the GTUC relating to employees working on the basis of renewable one-month contracts are not backed up by statistics or any other evidence. The Government indicates that, in accordance with section 22(1) of the Labour Code, employees are entitled to paid annual leave after a period of service of 11 months, but that leave may be granted before expiry of this deadline subject to an agreement between the parties. It adds that an employment contract may establish terms other than those provided for by the Labour Code with respect to holiday entitlement, provided that such provisions are not less favourable to workers.

The Committee observes that, contrary to the Labour Code of 1973 as amended, the Labour Code of 2006 does not contain any provisions giving effect to *Article 6* of the Convention, according to which workers dismissed for reasons imputable to their employer, before they have taken holidays due to them, shall receive in respect of every day of holiday due to them under the Convention, the remuneration established for each such day. *The Committee therefore asks the Government to adopt the necessary provisions to ensure the application of the Convention on this point.*

As regards the allegation made by the GTUC that workers are employed for years on one-month contracts, thereby depriving them of the entitlement to an annual holiday with pay, the Committee draws the Government's attention to the

fact that this matter comes within the scope of the supervision of the application of the Convention by the competent national authorities. However, the Committee notes that, under section 55 of the Labour Code of 2006, the Ordinance of 16 November 2004 approving the charter of the labour inspectorate has been repealed, and it understands that the latter has not been replaced since then by any other authority responsible for the enforcement of the labour legislation. *The Committee hopes that the Government will take steps as soon as possible to restore the operation of the labour inspectorate, so as to ensure the effective enforcement of the labour legislation, including with respect to holidays with pay.*

## Guatemala

### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1988)**

*Articles 2 and 6 of the Convention. Work in excess of normal hours of work – Overtime hours.* The Committee notes the observations made by the Trade Union of Plant and Well Operators and Guards of the Municipal Water Company and Allied Workers (SITOPGEMA), made in a communication received on 2 October 2012 and transmitted to the Government on 12 October 2012, concerning the application of the Convention. It notes that these observations follow up on those previously made by SITOPGEMA concerning the situation of workers at the Municipal Water Company of Guatemala City (EMPAGUA), who alternate work periods of 24 consecutive hours with rest periods of 48 consecutive hours without being paid for the overtime that they work. SITOPGEMA points out that decision No. 1088-2004-561 of 16 April 2008 of the labour and social insurance tribunal, which rejected the demand made by the workers concerned and to which the Committee referred in its observation of 2008, has since been overturned by the appeal court and the other courts concerned, and so the right of these workers to be paid for the overtime worked is thus recognized definitively. However, the union adds that new procedures for implementing this decision and calculating the exact amounts owed are being examined in the national courts and consequently the demand first put forward by SITOPGEMA more than ten years ago has still not been settled. *The Committee requests the Government to provide any comments that it wishes to make in response to the observations made by SITOPGEMA and to reply in detail to its observation of 2009.*

The Committee also notes the observations made by the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG), in a communication received on 10 September 2012 and transmitted to the Government on 28 September 2012, which refer to the Forced Labour Convention, 1930 (No. 29), but also have some relevance with regard to the application of Convention No. 1. The MSICG states, in particular, that textile industry employees in the *maquila* (export processing) sector are obliged to work more than 12 hours a day, without the labour inspection services taking any steps to prevent employers from imposing working days whose length exceeds legal limits. *The Committee requests the Government to provide any comments it wishes to make in reply to the observations of the MSICG.*

### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1961)**

*Articles 2 and 6 of the Convention. Exceeding normal hours of work – Overtime.* The Committee notes the observations made by the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) in a communication received on 10 September 2012 and transmitted to the Government on 28 September 2012. The MSICG's allegations specifically concern: the excessive working hours imposed on the staff of the Public Prosecutor's Office for Children and Young People following the introduction of a missing child warning system; working time regulations pertaining to the employees of the Guatemalan Social Security Institute and the Institute of Public Criminal Defence; and the obligation on employees in some municipalities to do unpaid overtime for work of a political nature for the mayors of these communities. *The Committee requests the Government to provide any comments it may wish to make in reply to the observations of the MSICG.*

## Nicaragua

### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1934)**

*Articles 3 and 11 of the Convention. Limits on daily and weekly hours of work – Adequate inspection.* The Committee notes the Government's reply to the comments made by the Trade Union Unification Confederation (CUS) alleging extensive practices of workers being obliged to perform additional hours of work without remuneration and also denouncing the Government's failure to monitor or control working time violations. In its response, the Government indicates that whenever workers are found to work in excess of the normal eight-hour daily limit, labour inspection services are instructed to verify that any additional hours of work are performed on a voluntary basis, that extra hours are fully paid at the overtime rate, and that any infringement of the relevant provisions of the Labour Code is properly sanctioned in accordance with the Labour Inspection Act No. 664 of 2008. The Government also refers to the *Technical Guide on Inspection* (Ministerial Agreement JCHG-003-08) that establishes a checklist to facilitate inspectors in ensuring compliance with the labour legislation, especially as regards hours of work and payment of wages. *While noting these explanations, the Committee asks the Government to provide more detailed information on: (i) inspection results –*

*including any relevant statistics – showing the number and nature of infringements of the working time legislation and the sanctions imposed; and (ii) any studies or inquiries undertaken in “call centres”, in response to the allegations that workers are constrained to work more than eight hours a day without being paid overtime in exchange of employment stability, and the results obtained.*

In addition, the Committee notes the Government’s reference to the situation of an enterprise established in an export processing zone which operates a compressed working time arrangement of four consecutive 12-hour working days followed by four consecutive days of rest. The Government has concluded that such arrangement was irregular and requested remedial action but the enterprise concerned has challenged the Government’s decision as unconstitutional before the Supreme Court. The Committee wishes to refer, in this regard, to paragraphs 207–213 of its 2005 General Survey on hours of work in which it took the view that special attention would have to be paid to ensure that the implementation of compressed work-week arrangements complies with standards prescribed by Convention No. 30 and also that in order to be compatible with Convention No. 30, compressed work-weeks in commerce and offices should ensure that the daily working day does not exceed ten hours, as required under *Article 4* of the Convention. ***The Committee requests the Government to keep the Office informed of any further developments in this regard and to transmit a copy of the Supreme Court decision once it is published. Finally, the Committee would appreciate receiving the Government’s response to the points raised in an earlier comment concerning the application of Article 7(1) (persons who carry out types of work that are intermittent or which require only their physical presence) and Article 7(2) (additional hours performed by workers to repair errors attributable to them).***

## Romania

### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1921)**

*Article 6(2) of the Convention. Overtime pay.* The Committee notes the observations made by the National Trade Union Confederation (CNS “Cartel ALFA”) in a communication received on 30 August 2012. CNS “Cartel ALFA” indicates that the Government’s report does not reply to the Committee’s previous comments and states that the Government has not taken any measures to ensure that overtime is paid at a rate at least 25 per cent higher than the normal rate, even in cases where the worker concerned is granted compensatory rest. The Committee notes that the Government, in its reply received on 25 October 2012, refers only to the provisions of Emergency Ordinance No. 80/2010 supplementing Emergency Ordinance No. 37/2008 regulating certain financial matters in the budgetary sphere, which it understands are applicable only to the public sector. It further notes the Government’s indications that, pursuant to Emergency Ordinance No. 80/2010, overtime worked by managerial staff is compensated for only in terms of free time. The Committee further notes that the Government, in its report on the application of the Convention, merely summarizes the relevant provisions of the Labour Code, without indicating its intention to amend them in order to ensure their conformity with the Convention. It recalls that, in its direct request of 2008, it asked the Government to take measures to ensure the higher rate of pay for overtime in all cases, whether or not compensatory rest is granted. The Committee also emphasized that the Labour Code does not stipulate the number of overtime hours which are authorized, as required by this Article of the Convention. ***The Committee hopes that the Government will take the necessary measures without delay to bring the national legislation into conformity with Article 6(2) of the Convention and requests it to keep the Office informed of any further developments in this matter.***

*Articles 2 to 5 and 6(1). Daily hours of work – Unequal distribution of weekly hours of work – Cases in which overtime is authorized.* The Committee recalls that, in its observation of 2011, it pointed out that the adoption of Act No. 40/2011 of 31 March 2011 amending the Labour Code did not reply to the comments made in its direct request of 2008 regarding the application of these provisions of the Convention. These comments were concerned in particular with section 115 of the Labour Code (former section 112), which allows daily hours of work to be increased to 12 hours and regarding which the Committee emphasized that the daily limit of eight hours established by the Convention may only be exceeded in the specific cases referred to in *Articles 3 to 6* of the Convention. The Committee also referred to section 113(2) (former section 110(2)) of the Labour Code which, combined with the national collective agreement, allows the unequal distribution of weekly hours of work, increasing daily working time to a maximum of ten hours on certain days. The Committee drew the Government’s attention to the fact that *Article 2(b)* of the Convention only authorizes the unequal distribution of weekly hours of work if daily working time does not exceed nine hours. Finally, the direct request referred to section 120(2) of the Labour Code (former section 117), which does not provide a restrictive list of the situations in which overtime may be worked, except for cases of force majeure or work that needs to be done urgently. The Committee recalled that, except for the two abovementioned cases, *Article 6(1)(b)* of the Convention only authorizes overtime work to enable the employer to deal with exceptional cases of pressure of work. ***The Committee asks the Government to take the necessary steps as soon as possible to ensure the implementation of these provisions of the Convention and to inform the Office of any decisions taken in this regard.***

## 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. **The Committee 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.**

## Slovakia

### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1993)**

*Article 6(1)(b) of the Convention. Temporary exceptions – Overtime.* The Committee notes the comments of the Trade Union Confederation of the Slovak Republic (KOZ SR) dated 26 August 2011 concerning the amendments to the Labour Code which were approved by Act No. 257 of 13 July 2011 and entered into force on 1 September 2011. The KOZ SR expresses its concern over section 97(10) of the Labour Code, as amended, which increases the maximum limit of authorized overtime work to 400 hours per year (550 hours for managers). According to the KOZ SR, this new provision allows for a broad and arbitrary interpretation of the concept of manager, conflicts with the requirement of reconciliation of work and family responsibilities and has adverse effects on employment.

In its reply, the Government argues, firstly, that under *Article 2* of the Convention, managers are excluded from its scope and, therefore, the comments of the KOZ SR are without merit on this point. Secondly, as regards the maximum annual limit of 400 hours of overtime for employees, the Government states that this limit represents an average of approximately eight hours of overtime per week (i.e. 400 hours divided by 52 weeks) which, even if added to the statutory 40-hour week, still does not exceed the 48-hour weekly limit prescribed by the Convention. The Government adds that, pursuant to section 97(5) of the Labour Code, an employer may only require overtime in cases of temporary and urgent increases in work demand or when public interest is concerned.

While noting the Government's explanations, the Committee observes that section 97(10) of the amended Labour Code does not require that the 400-hour annual limit of overtime be divided into 52 equal weekly periods and, therefore, there is nothing in the Code to prevent the possibility of employees being asked to perform excessive overtime hours in certain periods of the year. In this connection, the Committee is obliged to recall that the limits to overtime, while not specifically prescribed in the Convention, must be reasonable and must be in line with the general goal of the instruments to establish the eight-hour day and 48-hour week as a legal standard of hours of work. The Committee therefore concludes that section 97(10) of the Labour Code authorizes overtime within limits that go well beyond those contemplated in the Convention and potentially pose serious problems to workers' health and well-being. In addition, the Committee notes that section 97(10) provides for overtime where the public interest would so require, which clearly leaves room for much broader exceptions than the exceptional cases of pressure of work provided for in *Article 6(1)(b)* of the Convention. **The Committee accordingly asks the Government to review the provisions of the Labour Code on overtime in order to ensure that they are in full conformity with the letter and the spirit of the Convention. The Committee also asks the Government to reply in detail to the other important points it has raised in a direct request, formulated in 2008, with regard to the application of Articles 5 (averaging of hours of work) and 6 (daily working time limit in case of overtime and overtime pay).**

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 1** (Comoros, Equatorial Guinea, Iraq); **Convention No. 14** (Burundi, Iraq, Ireland, United Kingdom: British Virgin Islands, United Kingdom: St Helena); **Convention No. 30** (Equatorial Guinea, Iraq); **Convention No. 47** (Ukraine, Uzbekistan); **Convention No. 52** (Burundi, Uzbekistan); **Convention No. 89** (Burundi, Guinea, Iraq, United Arab Emirates); **Convention No. 101** (Burundi, Djibouti); **Convention No. 106** (Djibouti, Iraq, Tajikistan); **Convention No. 132** (Guinea, Iraq); **Convention No. 153** (Iraq); **Convention No. 175** (Bosnia and Herzegovina, Guyana).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 132** (Ireland).



## Occupational safety and health

### Algeria

#### **Guarding of Machinery Convention, 1963 (No. 119) (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:

With reference to its previous comments the Committee notes, with concern, that in its most recent report, the Government makes no reference to the process to revise Act No. 88-07 of 26 January 1988 and to adopt implementing regulations to ensure compliance with the Convention – a process that the Government has reported on for the past 20 years. It recalls that the Government in its previous report specifically referred to a draft executive decree that would reflect all the relevant provisions of the Convention, as well as those of the Recommendation. *Recalling the constitutional obligations of the Government to implement the provisions of Conventions it has ratified, the Committee urges 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 and to report to the Committee on any progress in this respect.*

In the meantime, 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 concerning 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 [I] 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 make every effort to take the necessary action in the near future.*

#### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1969)**

The Committee notes with *regret* that the Government's report has not been received. The Committee also notes that the Government report submitted in 2011 did not contain replies to the questions raised in its previous comments and did not indicate the measures taken, in law and in practice, to ensure the application of

*Articles 14 and 18 of the Convention.* It must therefore once again 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 the Government reference to the body in charge of the enforcement of the Convention, the Labour State Inspectorate. However, the information provided does not allow for a general appreciation of the manner in which the Convention is applied to the country. **The Committee accordingly once again 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 takes this opportunity to invite the Government to request ILO technical assistance with the view to ensure an 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 hopes that the Government will make every effort to take the necessary action in the near future.**

## Australia

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2004)**

*Legislation.* The Committee notes that Safe Work Australia is the national policy body responsible for the development and evaluation of the model work health and safety (WHS) laws. The model WHS laws are the basis for harmonized laws across Australia, and must be passed by Parliament in each jurisdiction to become legally binding. The model WHS laws consist of the the Model WHS Act, supported by model WHS regulations, model Codes of Practice and a National Compliance and Enforcement Policy. The Committee notes that all jurisdictions have committed to adopting the model WHS legislation, with minor variations as necessary to ensure it is consistent with relevant drafting protocols and other laws and processes operating within the jurisdiction. The Government indicates that full text copies of all federal and some State legislation can be obtained at <http://www.austrlii.edu.au>. The Committee notes with **satisfaction** that on 1 January 2012, the model WHS laws commenced in the Commonwealth, New South Wales, Queensland, the Northern Territory and the Australian Capital Territory, and will commence in Tasmania on 1 January 2013. In addition, the Committee notes from publically available sources that the WHS Bill was passed by both houses of the South Australian Parliament on 1 November 2012, and will enter into force on 1 January 2013. The Government indicates that Western Australia and Victoria are yet to implement the model WHS framework. The Committee welcomes the commitment by the Council of Australian Governments to review the harmonized WHS laws by the end of 2014.

The Committee also notes the communication by the Australian Council of Trade Unions (ACTU) received on 31 August 2012, and transmitted to the Government on 14 September 2012. The ACTU alleges that the key barriers to the passage of the relevant legislation in Western Australia and Victoria is the fact that they improve rights for workers. The ACTU urges the relevant state governments to secure the passage of the model WHS legislation as soon as possible. **The Committee hopes that the model WHS laws will be adopted by the remaining states as soon as is practicable.**

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

## 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:

*Comments by the Barbados Workers Union (BWU).* The Committee notes the comments transmitted by the BWU on 1 September 2011 which were communicated to the Government on 19 September 2011 and that no response thereto has been received from the Government. The Committee notes that the BWU reiterates its call to institute its previously suggested measures so as to mitigate the probability and severity of any incidents relative to radiation exposure, that the BWU on several occasions has requested that the Advisory Committee be reactivated, maximum admissible radiation exposure doses be fixed and a compulsory annual examination be instituted, among other measures and that according to the BWU workers in a number of establishments have, of late, made calls for the aforementioned measures relating to radiation protection to be implemented without delay. **In the light of these comments, the Committee requests the Government to take all appropriate measures to**

**ensure full application of the Convention. It also reiterates its request to the Government to respond to its previous observations 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 (ACRP); 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 near future.**

## Burkina Faso

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1997)**

*Legislation.* The Committee notes with *satisfaction* the adoption of the new Labour Code, Act No. 028/2008/AN of 13 May 2008 (Labour Code), including in particular its Part 3 Occupational Health Services, which gives partial effect to the Articles of the Convention. It also notes the adoption of Decree No. 20112-928/PRES/PM/MFPTSS of 21 November 2011 on general measures concerning protection, prevention and safety applicable to all enterprises. The Committee also notes the information that additional implementing legislation is being drafted, including, in particular, regulations implementing sections 262 and 264 of the Labour Code, and regulations on the following subjects: procedures for the establishment of occupational safety and health services across enterprises; functions of the health personnel within occupational safety and health services; equipment and procurement of supplies of prime importance for occupational safety and health services; and models for registers for use by the occupational safety and health services (daily consultation logs and registers concerning occupational accidents and diseases).

*Articles 1, 5 and 9 of the Convention. Functions and multidisciplinary nature of the occupational health services.* The Committee notes the referenced provisions in sections 255–263 and that according to section 263 further implementing legislation is foreseen. It notes that section 256 provides that the occupational health services is charged with the prevention of occupational risks, and that the functions the occupational health services are required to fulfil according to section 257 include the functions referred to in *Article 5(b), (f), (g), (i) and (j)*, but that it is not quite clear, however, how effect is given to its *Article 5(a), (c), (d), (e), (h) and (k)*. In particular, the Committee notes that contrary to section 256, section 257 does not refer to the preventive aspects of the occupational health services including those related to the identification and assessment of the risks from health hazards in the workplace. In this context, the Committee would also like to emphasize the provisions in *Article 9* which require that, in accordance with national law and practice, the occupational health services should be multidisciplinary. **The Committee requests the Government to provide further information on the effect given or envisaged to be given to *Article 5(a), (c), (d), (e), (h) and (k)* and, as appropriate, to take due account of the terms of *Articles 1 and 5* in the context of further development of legislation related to occupational health services.**

*Article 2. Implementation and periodical review of a coherent national policy on occupational health services.* The Committee notes the information in the Government's report, according to which the national occupational safety and health policy has been integrated in a national labour policy. In the absence of a copy of the policy adopted, the Committee cannot fully determine whether the action taken constitutes compliance with this Article of the Convention. **The Committee requests the Government to submit a copy of the national occupational safety and health policy which it hopes contains a policy specifically addressing the subject matters of the present Convention, including a mechanism to ensure its implementation and periodical review in consultation with the most representative organizations of employers and workers.**

*Article 9(2). Collaboration between the occupational health services and other services within the enterprise. Article 10. Professional independence of the personnel providing occupational health services. Article 11. Qualifications required for the personnel providing occupational health services. Article 15. Information to be provided to the occupational health services regarding absences due to ill health.* The Committee notes that the referenced provisions in the Labour Code do not appear to give effect to the provisions of these Articles. **The Government is requested to provide further information on the measures taken or envisaged to give effect to Articles 9(2), 10, 11, and 15 of the Convention.**

*Part VI of the report form. Application in practice and requests for technical assistance.* The Committee notes the information that the Government would like to benefit from technical assistance in the following four areas: (a) the promotion and the setting up of occupational health services; (b) training of a sufficient number of occupational medical doctors and nurses to ensure the provision of adequate assistance to the occupational health services; (c) training for the specialization of labour inspectors on matters related to occupational safety and health and in the area of international labour standards. **The Committee hopes that relevant technical assistance can be carried out and asks the Government to provide information on any steps taken in this respect with the Office. The Committee again requests the Government to provide information concerning the practical application of the Convention in order to follow the progress made.**

## Burundi

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1963)**

The Committee notes the comments made by the Trade Union Confederation of Burundi (COSYBU) in a communication received on 31 August 2012, which was forwarded to the Government on 18 September 2012, indicating that many public services, in the private sector, do not have occupational safety and health services.

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 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.**

## Canada

### **Asbestos Convention, 1986 (No. 162) (ratification: 1988)**

The Committee notes the information that the Canada Consumer Product Safety Act (CCPSA) entered into force on 20 June 2011, but that, substantively, there has been no change in how the Convention is applied in legislation as the workplace hazardous materials information system (Part II of the Hazardous Products Act), the Asbestos Products Regulations (APR) as well as previous prohibitions made thereunder remain in force, with minor amendments made to the APR in order to make them consistent with the new CCPSA regime. The Committee welcomes the information provided by the Government that in the province of *Newfoundland and Labrador*, the Workplace Health, Safety and Compensation Commission and the Occupational Health and Safety Branch of Service Newfoundland and Labrador released the 2011–13 Strategy for prevention for Known Occupational Diseases, developed in consultation with the social partners, which provides a framework for educating and raising awareness about all known occupational diseases in

Newfoundland and Labrador. It is a broad-based strategy aimed at reducing the burden and incidence of occupational disease in the province including asbestosis and mesothelioma. The *Nova Scotia* Department of Labour and Advanced Education has established an employer/employee advisory committee that provides advice to the Minister on occupational health and safety matters including matters related to asbestos in workplaces.

***Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference 100th Session, June 2011)***

*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 and periodical review in the light of technical progress and scientific knowledge. Article 4. Consultations with the most representative organizations of employers and workers. Article 10. Replacement of asbestos and total or partial prohibition of the use of asbestos.* The Committee notes the information provided by the Government and received on 30 August 2012 that, since November 2011, there has been no asbestos production in Canada. Against the background of the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011) after the discussion of this case, the Committee welcomes this information which it deems to be of great significance. It notes, however, that the report contains no further information in these respects. The Committee further notes the information that consultations regarding the current federal review of Part X of the Canada Occupational Health and Safety Regulations on Hazardous Substances, referenced in Canada's previous report, continues to be conducted by a tripartite working group, including representatives of the Canadian Labour Congress. ***With reference to the foregoing, its previous comments, and the provisions in Article 3(2) and 10, the Committee requests the Government to provide further information on asbestos production in Canada, including on whether the currently halted asbestos production is a temporary or permanent measure and whether it is a result of a formal decision to halt production. It also requests the Government to provide further information on the outcome of any relevant legislative reviews, including on the review of Part X of the Canada Occupational Health and Safety Regulations on Hazardous Substances.***

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

## Chile

***Occupational Health Services Convention, 1985 (No. 161) (ratification: 1999)***

The Committee notes the comments of the Trade Union Federation of Supervisors (ROL A) and Professionals CODELCO (the National Copper Corporation) Chile (FESUC), received on 14 June 2012 and forwarded to the Government on 22 June 2012. The Committee also notes the Government's report received on 11 September 2012, which does not contain observations on the FESUC's comments.

*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 to be taken to give effect to the Convention.* In its comments, the FESUC indicates that Act No. 16744 authorizes employers to administer occupational accident and disease insurance either through external bodies (employers' mutual associations) or through an internal entity, known as a delegated administration. Currently, in the Adina, Salvado and Chuquicamata divisions of the El Teniente company, the system of delegated administrations is in place and offers many benefits and positive features both for the company and for prevention in relation to the health and safety of its workers. The Radomiro Tomic division had the same arrangement until February 2012, when the Social Security Supervisory Authority learnt of the decision of the employer (CODELCO Chile) to hand over the administration and the health facilities to a private mutual company. According to FESUC, this decision is clearly detrimental to the health and safety of the company's workers employed in the Radomiro Tomic division and imposes a model that jeopardizes the situation of workers in other plants. The FESUC considers that the manner in which the decision was taken is in breach of the Convention. In its previous comments, the Committee requested the Government to continue providing information on its national policy on occupational health services and on the consultations held with the social partners on the measures to be taken to give effect to the Convention. The Committee notes that, in its report, the Government indicated that the Ministry of Health does not have the competence to ensure its implementation. The Committee recalls that it is the responsibility of the Government to give effect to ratified Conventions, and not of any specific ministry. The Committee also recalls that *Article 2* of the Convention sets out the obligation to formulate, implement and periodically review a coherent national policy on occupational health services in consultation with the most representative organizations of employers and workers and that *Article 4* establishes the obligation of the competent authority to consult the most representative organizations of employers and workers on the measures to be taken to give effect to the provisions of the Convention. ***The Committee requests the Government to provide information on the manner in which effect has been given to these Articles of the Convention, namely on the consultations held and their outcome, including with regard to the type of health services applicable to the Radomiro Tomic division.***

*Articles 5 and 8. Functions of the occupational health services as are adequate and appropriate to the occupational risks of the undertaking and participation of workers. Requirement for the employer, the workers and their*

representatives to cooperate and participate in the implementation of organizational and other measures relating to occupational health services on an equitable basis. The Committee notes the FESUC's reference to the introductory paragraph of *Article 5* of the Convention, under the terms of which "... with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking". The FESUC also makes reference to *Article 8* of the Convention, in accordance with which the employer, the workers and their representatives, where they exist, shall cooperate and participate in the implementation of the organizational and other measures relating to occupational health service on an equitable basis. The FESUC considers that the new system will have an impact on the application of the above Articles. **The Committee requests the Government to provide information on the manner in which it ensures that effect is given to these Articles of the Convention through the health services model recently adopted in the Radomiro Tomic division, in both law and practice. Please indicate in particular the manner in which it is ensured that the employer, the workers and their representatives cooperate and participate in the implementation of organizational and other measures relating to occupational health services on an equitable basis.** The Committee also requests the Government to pay particular attention to how effect is given to *Article 5* of the Convention in CODELCO as for some years it has been making comments on the application of this Article in another division of the same company.

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)**

*Article 11(c) of the Convention. Production of annual statistics on occupational accidents and diseases.* The Committee notes that in 2007 the State Council issued a Regulation on Reporting, Investigation and Handling of Production Safety Accidents (State Council Decree No. 493), which sets out comprehensive rules concerning "safety accidents", including classification, reporting responsibility and timeframe, and the facts of the accidents, as well as the investigation, handling and publication of such accidents. The Committee further notes that the new Reporting System for Production Safety Accidents Statistics (Notice No. 98), issued in 2012, established the regime of statistical monthly, quarterly and annual reports, as well as supervision of accident investigations and pursuit of accountability. In this regard, the Committee notes that the International Trade Union Confederation (ITUC), in a communication dated 1 September 2010, calls on the Government to compile and publish statistics, particularly at a provincial, municipal and county level, for greater transparency. In addition, the ITUC alleges that statistics concerning occupational diseases are largely undermined by the high number of undiagnosed cases among internal migrant workers who return to their place of origin when they fall ill. **Noting that the abovementioned Decree and Notice concern the reporting, investigation and handling of, and statistical report on "safety accidents" in general, and not specifically occupational accidents and diseases, the Committee asks the Government to indicate the authority responsible for producing annual statistics on occupational accidents and diseases, and the methodology applied. The Committee further asks the Government to indicate whether the abovementioned monthly, quarterly and annual statistical reports are publicly available; and in that case, provide such statistical information to the Office. The Committee also asks the Government to provide further information on whether the notification of occupational accidents and diseases, as required by national law, encompasses all workers, in particular with regard to the comments by the ITUC concerning internal migrant workers.**

*Article 15. Coordination between various authorities.* The Committee notes that the State Commission Office for Public Sector Reform issued the Circular on Division of Labour for Functions of Occupational Health Regulation (No. 104) in 2010, which requires all departments involved to perform their respective duties while maintaining effective coordination. In addition, the Committee notes that the inter-ministerial Production Safety Committee of the State Council is composed of officials from various government bodies, including the Ministry of Health. In its 2010 communication, the ITUC called for better coordination between occupational hazard inspection and occupational health examination. In this respect, the Committee would appreciate receiving further information from the Government on the coordination between the various authorities and bodies responsible for occupational safety and those responsible for occupational health. **In addition, noting that the term "production safety" encompasses more than just occupational safety, the Committee asks the Government to provide further information on the role of the Production Safety Committee of the State Council in relation to occupational safety and on whether a similar inter-ministerial mechanism exists in relation to occupational health.**

*Part V of the report form. Application in practice. 1. Workplace accidents.* The Committee welcomes the Government's efforts to improve the situation concerning production safety in the country, including enhancing the legal system and administrative regime for production safety; building up the capacities of those responsible for ensuring safety supervision and inspection; cracking down on illicit or illegal acts of production and construction; and launching special safety campaigns in major industries and sectors. The Government indicates that these efforts have yielded positive results across the country and that the situation of production safety is moving steadily in the direction of sustainable improvement. The Government also acknowledges the challenges brought about by the current process of rapid industrialization and urbanization in the country, which represents a peak phase for possible safety accidents. The

Committee notes that in 2010, compared to the figures for 2005, there was a 49.4 per cent decrease in the number of “safety accidents”, with a total of 354,500; and the number of fatalities decreased by 37.4 per cent, with a total of 79,500. This decrease has been seen in many of the high risk sectors, including mining, hazardous chemicals, fireworks, road transport, fire fighting, railway transport, water transport, fishing and agriculture (machinery), etc. ***The Committee requests the Government to specify how many of the “safety accidents” recorded, and indicated above, relate to occupational accidents, which cover an occurrence arising out of, or in the course of, work, and to provide this information disaggregated by sector activities, age and gender if possible. The Committee invites the Government to continue to provide information on the measures taken to target the high number of occupational accidents in high risk workplaces.***

2. *Occupational diseases.* The Committee notes the information provided by the Government concerning the current legislation in place with regard to occupational diseases. The Committee in particular notes with *interest* that in August 2009, the State Administration of Work Safety, the Ministry of Health, the Ministry of Human Resources and Social Security and the All-China Federation of Trade Unions jointly carried out special enforcement operations targeting dust and highly toxic material hazards in multiple sectors, including the jewellery processing sector. These special operations focused on urging producers and operators to fulfil their principal obligations of preventing and controlling occupational hazards. The Committee notes however, that the Government has not responded to the concerns raised by the ITUC in relation to the alleged problems in the application of this Convention in relation to occupational diseases, and in particular concerning the lack of information and training given to workers on the risks of occupational diseases and hazards in the workplace, including specific health risks. ***The Committee therefore reiterates its request that the Government provide information on the application of the Convention in practice, with reference to the comments by the ITUC concerning occupational diseases, 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 diseases reported.***

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

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2002)**

The Committee notes the responses provided in the Government’s report concerning the Committee’s previous comments on the application of the Convention. The Committee notes however, that the Government’s report does not address the issues raised by the International Trade Union Confederation (ITUC) in its communication dated 1 September 2010, and transmitted to the Government on 15 September 2010. ***In this regard, the Committee reiterates its request that the Government respond to the 2010 communication by the ITUC, and in particular to provide further information concerning the following points.***

*Article 8(1)(b) and (c) of the Convention. Cooperation between two or more employers undertaking activities simultaneously at one construction site.* The Committee notes the comments by the ITUC concerning the long-established practice of subcontracting in the construction industry in China. The ITUC alleges that subcontracting offers construction companies increased opportunities to exploit the labour market, reduce costs, and allows employers to avoid responsibilities concerning health and safety. ***The Committee asks the Government to provide further information on the application of the requirements under Article 8 in practice, with reference to the comments raised by the ITUC concerning subcontracting.***

*Article 13. Safety at the workplace. Article 28. Health hazards.* The ITUC states that the construction industry in China, and its safety management practices, do not meet international standards, national laws and regulations due to a lack of prevention, illegal operations, poor preventive and protective measures, lack of provision of personal protection equipment and effective and regular safety inspections, audits and training. In addition, the ITUC refers to the highly dangerous working environment that construction workers in China are faced with, including exposure to a wide range of chemical, physical and biological hazards including noise, dirt, dust, chemicals, working at height, in confined spaces, heavy work and stress. ***The Committee asks the Government to respond to the comments by the ITUC concerning the lack of overall safety, and the health hazards at workplaces in the construction industry, and to indicate the application of the provisions of this Article in practice, for example the number of contraventions reported in this area, and any follow-up measures undertaken.***

*Article 18(1). Work at heights including roof work.* The ITUC indicates examples of cases of workplace deaths caused by the failure to ensure that workers wear safety harnesses when working at heights, and that workers apparently do not wear safety harnesses when working at heights so that they can work faster to finish the construction project. ***The Committee asks the Government to respond to the comments by the ITUC concerning the enforcement of safety measures for work at heights, and to indicate the application of this Article in practice, for example the number of contraventions reported in this area, any follow-up measures taken, and any measures taken to promote the use of safety harnesses at construction sites.***

*Article 32. Welfare of workers and the provision of separate sanitary and washing facilities.* The Committee notes the response provided by the Government, which indicates the relevant provisions of the Construction Site Environment and Sanitation Standards which provide for sanitary and washing facilities on construction sites. The



Committee notes however, that there is no provision which specifically provides for men and women workers to be provided with separate sanitary and washing facilities. The ITUC alleges that construction workers live in temporary accommodation near construction sites with poor sanitary and washing facilities and potentially dangerous food and water, and that these construction sites do not have separate sanitary and washing facilities for male and female workers, and as a result sexual harassment is frequent. ***The Committee asks the Government to take the necessary measures to ensure that men and women workers are provided with separate sanitary and washing facilities; and in the meantime to provide information on how the provisions of Article 32(3) are applied in practice, with reference to the concerns raised by the ITUC.***

***Article 33. Information and training.*** The ITUC indicates that while construction workers are entitled under national law to receive safety training on safe operation and protection measures, that in reality, more than 95 per cent of migrant workers on construction sites lack on-the-job training. The ITUC also observes that construction workers are exposed to a wide range of life-threatening conditions, including HIV/AIDS, and that despite this, there is a lack of HIV awareness which makes workers vulnerable to the risk of contracting this disease. The ITUC recognizes the efforts by the Government in this area, including the provision, in 2009, of skills training to more than 12 million migrant construction workers. The ITUC notes, however, that the training was aimed at helping workers re-enter the labour market during the financial crisis, and the ITUC does not have information on whether the training incorporated safety matters. ***The Committee asks the Government to respond to the comments raised by the ITUC concerning the provision of information to, and training of, construction workers, and to indicate the application of this Article in practice, for example the number of contraventions reported in this area, and any follow-up measures undertaken.***

***Article 34. Reporting of accidents and diseases.*** The ITUC alleges that the official figures on construction safety are regarded as less than reliable, in particular the accident reporting system, and that missing report cover ups, and delayed reports are common occurrences. The ITUC calls on the Government to include health and safety targets and indicators of success in the national plans, and to implement more robust reporting systems. In this respect, the Committee also refers the Government to its comment this year regarding the application by China of the Occupational Safety and Health Convention, 1981 (No. 155). ***The Committee asks the Government to respond to the comments by the ITUC concerning the reporting of occupational accidents and diseases, for example information on the number, nature and cause of occupational accidents and diseases reported, with specific reference to the construction sector.***

***Article 35. Effective enforcement of the provisions of the Convention.*** The ITUC indicates that there is continued evidence of breaches of national laws and regulations regarding safety and health in the construction industry, including widespread bureaucracy, collusion by officials, lack of enforcement and lack of cross-departmental cooperation. The ITUC alleges that reckless on-site supervision also remains common and that many construction sites operate without professional inspectors, and inspection activities on construction sites are often carried out by the supervisor who may not themselves have ever received safety inspection training. In addition, the ITUC states that local authorities appear to have a lack of safety awareness, do not effectively enforce the safety laws and regulations, do not understand their responsibilities and do not engage in monitoring. While penalties exist for breaches by employers who cause serious harm to the health of their employees, the ITUC alleges that enterprises have been known to simply change the company name, location or legal representative as a means of evading compensation payments. In this respect, the Committee also refers the Government to its comment this year regarding the application by China of Convention No. 155. ***The Committee asks the Government to respond to the comments by the ITUC concerning implementation of the Convention through appropriate inspection services and the provision of appropriate penalties, and to indicate the application of this Article in practice, for example the measures taken by the Government to monitor the effective enforcement of the provisions of the Convention at the national, regional and provincial levels.***

***Part VI of the report form. Application of the Convention in practice.*** The Committee notes the information provided by the Government in relation to the special operations undertaken to crack down on illicit or illegal activities in the construction industry as well as the promotion of safety. The Government indicates that special inspections have been intensified in key areas of the construction industry which carry higher risks for serious accidents, including colossal scaffolds, deep foundation pits, large lifting machines, etc. The Committee notes the comments by the ITUC, which state that the increasing growth of development, downsizing, outsourcing, the use of labour-only subcontracting and the so-called self-employed have had a negative impact on the management and control of health and safety in construction. The ITUC notes that the accident rate is increasing and includes buildings collapsing, workers being crushed by falling building materials and scaffolding, being maimed by faulty machinery or falling from heights. ***The Committee asks the Government to provide information on the application of the Convention in practice, with reference to the comments by the ITUC; and in particular to indicate any data available on the number of workers covered by the legislation, the number and nature of the contraventions reported, the number, nature and cause of occupational accidents and diseases reported, with specific reference to the construction sector, and any follow-up measures taken.***

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

## Colombia

### **Asbestos Convention, 1986 (No. 162) (ratification: 2001)**

The Committee notes the Government's report received on 25 September 2012, a communication from the Single Workers' Union of Materials for the Construction Industry (SUTIMAC) received on 10 April 2012, and a communication from the Confederation of Workers of Colombia (CTC) received on 31 August 2012.

*Background.* For a number of years the Committee has been asking the Government to adopt legislation which gives effect to the provisions of the Convention. The Committee is also following up on joint communications from the CTC and the Single Confederation of Workers (CUT) dated 2010 and 2011, which claim that no public policies have been established at the national level by the Government for the control and management of asbestos; the legislation is not being aligned to the Convention; technical standards are not being implemented; no measures are being promoted by the Government to eliminate the risk; the Government has transferred all the occupational safety and health obligations to the employer; precarious measures are set out in internal work regulations or in occupational health committees and these are not applied in practice; and there is no national training programme on the handling and use of asbestos. The CUT and the CTC also assert that there is no dialogue with the various social partners; and they conclude that they consider it necessary to adopt a public policy for the total prohibition of asbestos. The CUT and CTC add that over 10,000 tonnes of asbestos per year are extracted from the mine located in the department of Antioquia, which is absolutely hazardous for the miners, as the mining is carried out using artisanal techniques, without technology. The Committee notes that the Government has not sent any comments on the joint communication of 2011.

*Communication from SUTIMAC.* The trade union asserts that it represents over 4,800 members and represents some 75,000 indirect workers involved in the production and manufacture of high-density fibro-cement and friction materials; that in the context of the joint occupational health committees SUTIMAC has been monitoring the observance of established hazard control measures and the national legislation; that the estimate of 320 deaths per year related to asbestos in Colombia does not reflect the reality experienced by workers in the sector; and that they consider that the measures adopted and pending adoption allow the sector to ensure health and safety at work for persons working with chrysotile fibres. It urges the Government to recruit adequate numbers of duly qualified labour inspectors to ensure that a constant monitoring and verification of safety measures in production plants is carried out, thereby ensuring decent and safe work. SUTIMAC indicates that the mine involved in chrysotile exploitation belongs to the workers engaged in the exploitation and marketing of these fibres. Their representatives form part of the National Commission on Occupational Health in the Asbestos Sector.

*Communication from the CTC received in 2012.* The CTC reiterates the need for the total prohibition of asbestos in Colombia and declares that 44 countries have already totally prohibited the use of asbestos and that in Canada and the United States it has been phased out completely.

*Article 3 of the Convention. Legislative measures for the prevention and control of and protection of workers against health hazards.* In its previous observation the Committee urged the Government to ensure the rapid adoption of legislation giving effect to the provisions of the Convention, including the adoption of pending draft legislation and the preparation of new legislation where necessary, and asked it to provide information in this respect. The Committee welcomes the adoption of Decision No. 007 of 4 November 2011 of the Ministry of Health and Social Protection adopting the Regulations on safety and health with regard to chrysotile and other fibres and its technical annex, but notes however that it will only enter into force in May 2013. The Government states repeatedly this Decision and its technical annexes will become binding. The Committee notes that these Regulations will constitute an important step towards the effective implementation of the Convention. The Committee further notes that this Decision will respond to certain issues raised by the CUT and CTC, which were referred to above. ***The Committee requests the Government to continue to supply information on any legislation adopted in relation to the present Convention.***

*Technical standards.* In its previous comment the Committee asked the Government to supply information on the compulsory nature of the technical standards relating to asbestos. The Committee notes that the Government has not provided any information on this matter. ***The Committee again requests the Government to indicate whether the technical standards relating to the Convention are binding.***

*Article 4. Consultations with the most representative organizations of employers and workers concerned regarding the measures to be taken to give effect to the provisions of the Convention.* In its previous comments the Committee, while noting that the Government holds consultations within the National Commission on Occupational Health relating to Chrysotile Asbestos and Other Fibres, also noted that the CUT and CTC were calling for real and effective dialogue and that they considered other forums of consultation to be more appropriate. The Committee noted that section 3(7) of Decision No. 1458 of 2008 includes a trade union delegate or workers' representative from each fibro-cement enterprise in the abovementioned National Commission, while in section 3(9) it includes a trade union delegate or workers' representative from each friction materials enterprise, and noted that the CUT and CTC did not appear to be represented in this Commission. The Committee expressed its hope that the Government would make efforts to include in consultations other organizations that meet the criterion of the most representative organizations of employers and workers concerned, and asked for information on the outcome of these consultations. The Government indicates that the workers' representatives participating in the abovementioned Commission include the secretary of SUTIMAC and one of the

executive secretaries of the CUT but, with a view to maintaining full participation and in compliance with the Committee's recommendation, it will include other workers' organizations in the meetings of the Commission on Asbestos. **The Committee requests the Government to indicate which other most representative organizations it has included in the Commission on Asbestos and to provide information on the consultations held concerning measures to be adopted in order to give effect to the provisions of the Convention and on the results thereof. The Government is also requested to provide information on the consultations held regarding the adoption of Decision No. 007 referred to above.**

**Article 5(1). Enforcement of the laws and regulations adopted pursuant to Article 3 of the Convention through an adequate and appropriate system of inspection. With regard to the comments from SUTIMAC requesting the Government to recruit adequate numbers of duly qualified labour inspectors to ensure that the constant monitoring and verification of safety measures in production plants is continued, thereby ensuring decent and safe work, the Committee requests the Government to take the appropriate steps to ensure an adequate and appropriate inspection system in relation to the present Convention and to supply information in this respect.**

**Article 9(a). Making work in which exposure to asbestos may occur subject to regulations prescribing adequate engineering controls and work practices, including workplace hygiene. The Committee notes that the Government makes a general reference to Decision No. 007 containing the measures referred to by the present Article of the Convention. The Committee requests the Government to provide information on the manner in which these measures are applied in practice to different types of work in which the worker may be exposed to asbestos, including at the mine referred to in the communications from the CUT, CTC and SUTIMAC.**

**Article 9(b). Prescribing special rules and procedures, including authorization, for the use of asbestos or of certain types of asbestos or products containing asbestos or for certain work processes. The Committee requests the Government to provide information on the clauses of Decision No. 007 which set forth special rules and procedures, including authorization, for the use of asbestos or of certain types of asbestos or products containing asbestos or for certain work processes.**

**Article 10 (replacement of asbestos with other materials or prohibition of the use of asbestos) in conjunction with Article 3(2) (periodic review of national laws and regulations in the light of technical progress and advances in scientific knowledge) and Article 4 (consultation of the most representative organizations of employers and workers concerned).** The Committee notes that in its communication of 2012, the CTC reiterates the need to revise the legislation in the light of scientific and technical knowledge and to consider the replacement or prohibition of all forms of asbestos, including chrysotile. In its previous comments the Committee recalled that any legislative measure must be the subject of consultation and periodic review in the light of technical progress and advances in scientific knowledge, in accordance with *Article 3(2)* of the Convention, and that accordingly *Article 10* has to be viewed in the light of *Article 3(2)* and must be the subject of consultations, as required by *Article 4* of the Convention. The Committee therefore asked the Government to undertake such a review according to the terms of the abovementioned Articles and to provide information on this matter. The Committee notes the Government's indication that it has examined the possibility of replacement or prohibition contained in *Article 10* of the Convention and for this reason Decision No. 007 explicitly prohibits the use of amphibole types of asbestos and chrysotile in friable, sprayed or sprinkled form. The Committee reminds the Government that the obligation to impose such prohibitions is established in *Articles 11* and *12* of the Convention and so, when *Article 10* of the Convention refers to replacement or prohibition, it means the other forms of asbestos not covered by *Articles 11* and *12* of the Convention. Furthermore, the Government states that it is constantly reviewing this subject and until there is established proof of a less harmful substance to replace chrysotile, it will not consider the feasibility of total prohibition. **The Committee requests the Government in accordance with Article 3(2) and in the context of consultations with the most representative employers' and workers' organizations concerned, as required by Article 4, to examine at intervals the possibility of replacement or prohibition as set out in Article 10 of the Convention and to provide information on such periodic review, including consultations and the outcome thereof.**

**Article 11. Prohibition of crocidolite and products containing this fibre. With reference to its previous comments, the Committee notes that section 3.1.1(b) of Decision No. 007 prohibits the use of any amphibole type of asbestos. The Committee requests the Government to indicate whether the aforementioned section also prohibits products containing crocidolite.**

**Article 12. Prohibition on spraying of all forms of asbestos. With reference to its previous comments, the Committee notes that section 3.1.1(c) of Decision No. 007 prohibits the application of chrysotile asbestos in friable, sprayed or sprinkled form. The Committee requests the Government to supply information on the application of this prohibition in practice.**

**Article 13. Notification by employers to the competent authority of certain types of work involving exposure to asbestos. The Committee notes the Government's statement that section 2.2.12 of Decision No. 007 states that employers must send to their occupational risk administration (ARP) during the last quarter of the year, information on operations and workplaces in which the fibres covered by the regulations are present, and also on raw materials or supplies, the working population by levels of risk, and data on morbidity. Furthermore, according to section 2.1.2 of Decision No. 007, each ARP must provide the Directorate-General for Occupational Hazards at the Ministry of Social Protection with information on the number of enterprises, their affiliated workers; the recommended control and**

prevention measures; and the number of cases of asbestosis and other diseases whose classification testifies to a causal link with exposure to chrysotile asbestos and other similar fibres. ***The Committee requests the Government to provide information on the application in practice of the obligation to notify the competent authority of specific types of work involving exposure to asbestos, including information on the notifications received and the types of work notified.***

*Article 14. Responsibility of producers and suppliers of asbestos, and manufacturers and suppliers of products containing asbestos, for adequate labelling.* The Committee notes the Government's indication that section 6.6.2 of Decision No. 007 lays down the obligation to label the initial packaging and states that all bags must be labelled, with the indication that they contain chrysotile and that their contents may be dangerous under certain conditions. Section 3.9 of the same Decision states that products containing chrysotile must bear a symbol with a caption stating "contains chrysotile – do not create or inhale dust – possible danger to health". The Committee notes that these paragraphs do not indicate who shall be responsible for the labelling. ***The Committee requests the Government to indicate whether the aforementioned sections place the obligation on the four categories of persons referred to in this Article of the Convention, namely producers and suppliers of asbestos and manufacturers and suppliers of products containing asbestos, and also to indicate the manner in which the application of these sections of Decision No. 007 is ensured in practice.***

*Article 15(2). Fixing, periodic review and updating of exposure limits or other exposure criteria in the light of technical progress and advances in technological and scientific knowledge.* In its previous observation the Committee noted the Government's indication that for 2011 the threshold limit value (TLV) for chrysotile in workplaces was 0.1 fibres per cubic centimetre of air and asked the Government to indicate the text which establishes the limit value for asbestos and the manner in which it is ensured that enterprises and workers are aware of this limit value and that it is respected. The Committee notes the Government's reference in its report to sections 1.24 and 3.1.2 of Decision No. 007. The Government indicates that to ensure that both workers and occupational hazard administrations are aware of permissible limits for asbestos the regulations are being widely disseminated. However, the Committee notes that the abovementioned sections explain the concept of permissible limits and the method of calculation but do not indicate the permitted limit value, which, as stated by the Government in its previous report, is 0.1 fibres per cubic centimetre of air. ***The Committee urges the Government to indicate the legislative text which establishes the limit value for asbestos in order to ensure that enterprises and workers are aware of this limit value and that it is respected, and requests it to provide information in this respect.***

*Article 17. Demolition work. Authorization for demolition or removal work to be undertaken only by employers or contractors who are recognized by the competent authority as qualified to carry out such work. Obligation to draw up a workplan and to consult the workers or their representatives.* In its previous comments the Committee urged the Government to give effect to this article in law and in practice and to provide information on this subject. It also asked the Government for information on the allegations from the CUT and CTC concerning the use of crocidolite in the construction sector. The Committee notes the Government's indication that it has no knowledge of the use of crocidolite or of any complaints relating to its use and that the Ministry of Labour has to be informed for the relevant penalties to be imposed. The Government indicates that section 4.5 of Decision No. 007 gives effect to this Article of the Convention. The Committee notes that the aforementioned section contains instructions relating to prevention and protection measures but does not provide that only employers or contractors who are recognized by the competent authority as qualified to carry out such work shall be able to undertake the demolition of plants or structures containing friable asbestos insulation materials and the removal of asbestos from buildings or structures in which asbestos is liable to become airborne. Nor does it lay down the obligation for the employer or contractor to draw up a workplan specifying the measures to be taken before starting demolition work or to consult the workers or their representatives on the aforementioned workplan. ***The Committee again requests the Government to establish a system of authorization whereby only employers or contractors who are recognized by the competent authority as qualified to carry out the work referred to by this Article of the Convention shall be able to undertake it, and requests it to provide information on this matter. The Committee also requests the Government to adopt measures incorporating the obligation to establish a workplan in accordance with Article 17(2) and to supply information on this matter.***

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 2013.]***

## Croatia

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1991)**

*Legislation.* The Committee notes with ***satisfaction*** the information provided in the Government's report concerning the adoption of the ordinance on the list of high risk machines and equipment (OG 47/02), the ordinance on machine safety (OG 135/05) and the ordinance on safety and health requirements for the use of work equipment (OG 21/08) which, inter alia, include provisions giving effect to *Article 11(1) of the Convention*.

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

## Djibouti

### **Radiation Protection Convention, 1960 (No. 115) (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 notes that, for the fourth 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). 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 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: 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 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, 13–16 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, 13–16 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.*

## France

### French Polynesia

#### **Radiation Protection Convention, 1960 (No. 115)**

The Committee notes the information that a new Labour Code for French Polynesia was adopted on 4 May 2011 (Act No. 2011-15) and that it includes provisions regulating the prevention of risks related to the exposure to ionizing radiation (sections Lp.4431-1 to Lp.4433-2 and A.4431-1 to A.4434-3) which, in terms of substance, reproduces virtually verbatim the provisions in Deliberation No. 91-019 AT of 17 January 1991. The Committee notes with *regret* that contrary to *Articles 3(1) and 6(1) of the Convention* and in spite of statements made in previous reports, due account does not seem to have been taken in the preparation of the Labour Code of the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) referred to in the General Observation of 1992 under this Convention. The Committee also notes the information that a guide, developed by the French nuclear safety authority on the main provisions relevant for protection against ionizing radiation in the medical and dental profession, has been edited and adapted for French Polynesia, and that the framework agreement for cooperation between the competent authorities and the nuclear safety authority, which expired 31 December 2011, is in the process of being renewed. **With reference to the comments the Committee has been making since 1993, the Committee urges the Government to pursue its efforts to institute relevant legislative changes to comply with the Convention in the light of current knowledge, to continue its efforts to ensure the application of the Convention in practice, and to inform the Committee of any progress made in these regards.**

Against this background the Committee wishes, in particular, to stress the following main substantive issues.

*Article 6. Dose limits for internal exposure to radiation.* The Committee notes that pursuant to Section A.4431-1 the relevant provisions concerning prevention against risks for exposure to ionizing radiation do not cover internal exposure to radiation. **The Committee requests 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.**

*Article 7. Dose limits fixed for workers directly engaged in radiation work and for pregnant women.* The Committee notes that pursuant to sections Lp.4431-2 and A.4431-2 of the Labour Code, the maximum dose limit for external exposure of workers to ionizing radiation under normal working conditions over a period of 12 months is fixed at 0.05 Sv (or 50 mSv) but that, according to the 1990 Recommendations of the ICRP, the corresponding limit is fixed at an effective dose of 20 mSv per year, averaged over five years (100 mSv in five years), with the further provision that the effective dose should not exceed 50 mSv in any single year. The Committee also notes that as regards pregnant women, section A.4151-7 of the Labour Code provides that, from the time a pregnancy has been declared until the delivery, measures should be taken to ensure that the exposure to ionizing radiation of the lower trunk of pregnant women be reduced as much as is reasonably possible and that the accumulated exposure in any event should not exceed 10 mSv which is five times higher than the ICRP recommendation of 2 mSv. **The Committee requests the Government to indicate the steps taken or envisaged to ensure that the maximum permissible doses of exposure for workers directly engaged in radiation work and for pregnant women are set in the light of current knowledge.**

*Article 8. Maximum permissible doses of exposure for workers not directly engaged in radiation work.* The Committee notes that paragraph 9 of section A.4431-1 of the Labour Code defines the category of exposed workers as persons who, because of their work, may be exposed to annual doses of ionizing radiation greater than one tenth of the annual limit set for workers which, pursuant to paragraph 1 of section A.4431-2, is set at 0.05 Sv. (or 50 mSv) per year. It follows that the maximum permissible dose of exposure for workers not directly engaged in radiation work is set at 5 mSv per year which is five times higher than the values recommended by the ICRP. **The Committee requests the Government to indicate the steps taken or envisaged to ensure that the maximum permissible doses of exposure for workers not directly engaged in radiation work are set in the light of current knowledge.**

*Article 11. Appropriate monitoring of workers and places of work.* The Committee notes the information that pursuant to Decree No. 19 PR of 9 January 2012, the “Bureau Veritas” has been charged to ensure the controls prescribed in Lp.4431-1 and A.4432-7 of the Labour Code for a period of three years. It also notes that a medical inspector has not yet been appointed, that a post for such a medical inspector is foreseen in the budget of 2012 and that the recruitment

process for the nomination of such an inspector is under way. **The Committee urges the Government to ensure that a medical inspector is appointed in the very near future. The Committee requests the Government to provide copies of any relevant reports produced by Bureau Veritas as well as to provide information on measures it has taken to follow up on any recommendations made, violations identified and action taken in this regard.**

*Articles 12 and 13. Medical examinations.* The Committee notes the provisions in the Labour Code concerning medical surveillance of workers. With reference to the terms of the Convention, the Committee notes that the relevant legislation provides for the conduct of medical examinations prior to taking up employment involving exposure to ionizing radiation. These provisions do not, however, entitle workers to receive “appropriate medical examinations” during their employment “at appropriate intervals” as provided in *Article 12*. Furthermore, the relevant provisions in the Labour Code do not specify the circumstances in which, because of the nature or the degree of the exposure, workers shall promptly undergo appropriate medical examinations pursuant to *Article 13(a)*. **The Committee requests the Government to indicate the measures taken or envisaged to ensure the provision of appropriate medical examinations of exposed workers in full conformity with Articles 12 and 13.**

*Article 13. Emergency situations.* With reference to its previous comments and its General Observations of 1987 and 1992 on this Convention including accounts made of the recommendations of the ICRP, the Committee notes that *Article 13* provides that in circumstances to be specified, because of the nature or degree of the exposure, the employer should promptly take certain action; in particular, the employer should take any necessary remedial action on the basis of technical findings and medical advice. The recommendations of the ICRP as well as those of the ILO place an emphasis on the necessity of planning in advance the measures to be taken in abnormal situations. The Committee notes that the measures to be taken in abnormal or emergency situations are not regulated in the new Labour Code. **The Committee invites the Government to provide information on the measures taken or contemplated in relation to emergency situations involving possible exposure to ionizing radiation.**

*Article 14. Continued employment of exposed workers and the provision of alternative employment.* The Committee notes that the relevant provisions in the Labour Code do not seem to give effect to the provisions of this Article. In this context the Committee also invites the Government to take into account the terms of paragraphs 28–34 and 35(d) of its 1992 General Observation on the Convention which, *inter alia*, refer to the need to find alternative employment for workers whose continued employment in a particular job is contra-indicated for health reasons and the efforts required to provide such workers with suitable alternative employment, or to maintain their income through social security measures or otherwise. **The Committee requests the Government to indicate the measures taken or envisaged to ensure that full effect is given to this Article of the Convention and to provide information on the account taken of the needs of workers whose continued employment in a particular job is contra-indicated for health reasons.**

*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 in French Polynesia, including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention.**

*[The Government is asked to reply in detail to the present comments in 2013.]*

## New Caledonia

### Radiation Protection Convention, 1960 (No. 115)

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 provided concerning the developments in the area of occupational safety and health in general in the country, including, in particular, the adoption of law No. 2009-7 of 19 October 2009 concerning occupational safety and health (OSH) as part of the implementation of the new Labour Code adopted in 2008. The Committee notes that the new OSH law is broad in scope, that it emphasizes prevention and risk assessment, that it includes detailed provisions regarding the functions of the labour inspection services, and that the Government refers to several activities destined to increase the general awareness to OSH issues. The Committee notes with *regret*, however, that the Government reports that no change in law and in practice has occurred as regards the specific requirements of this Convention. **The Committee requests the Government to provide a copy of the new OSH law adopted, and urges the Government once again 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. Against this background, the Committee is bound to reiterate its previous comments, which read as follows:**

The Committee notes the information contained in the Government’s report, including the information concerning the adoption of Decision No. 547 of 25 January 1995 relating to the protection of workers against the hazard of ionizing radiations, as well as Orders Nos 3165-T, 3167-T, 3169-T, 3171-T and 3173-T of 10 August 1995. It wishes to bring the Government’s attention to the following points.

*Article 1 of the Convention. Tripartite consultation.* The Committee notes that the legislation referred to by the Government as giving effect to the Convention does not seem to contain provisions ensuring consultation with the representatives of the workers and the employers regarding the preparation and implementation of measures giving effect to the Convention. **The Committee requests the Government to indicate the measures taken or envisaged for this purpose.**

*Article 3(1) and (2), and Article 6. Appropriate measures for ensuring the effective protection of workers against ionizing radiations and for the review, in the light of knowledge available at the time, of the maximum permissible doses of ionizing radiations.* In its report, the Government refers to the exposure limits set forth in sections 5 to 8 of Decision No. 547/CP of

25 January 1995. The Committee notes that these exposure limits reflect those set forth by the International Commission on Radiological Protection (ICRP) in 1977. In this regard, the Committee brings the attention of the Government to the fact that under the terms of *Article 3(1)* and *(2)*, and *Article 6*, of the Convention, all appropriate steps shall be taken to ensure effective protection of workers, as regards their health and safety, against ionizing radiations and that, for this purpose, maximum permissible doses of ionizing radiations shall be kept under constant review in the light of “knowledge available at the time” and “new knowledge”. The Committee recalls that, following a recommendation of 1977, these maximum doses have been revised by the ICRP and that new exposure limits were set forth in its recommendations, adopted in 1990. The Committee refers to its recommendations in its 1992 general observation and emphasizes, in paragraph 11, that the ICRP set, inter alia, a maximum admissible dose limit of 20 mSv per year, averaged over five years (100 mSv in five years), but not exceeding 50 mSv in any single year. The Committee also invites the Government to refer to paragraph 13 of its general observation concerning the maximum admissible dose for pregnant women. The Committee notes that the legislation to which the Government refers is not in conformity with the latest recommendations of the ICRP according to which women who may be pregnant shall be ensured a level of protection broadly comparable with that provided for members of the general public (i.e. effective dose not to exceed 1 mSv per year). The recommendations also envisage that, once the pregnancy is declared, the equivalent dose limit to the surface of the woman’s abdomen should not exceed 2 mSv for the remainder of the pregnancy. Finally, the Committee notes that the legislation giving effect to the Convention does not seem to contain provisions ensuring the protection of the public in general against exposure to radiations. **The Government is requested to indicate the measures taken or envisaged with regard to these points, thus ensuring the effective protection of the workers, in the light of the knowledge available at the time, according to the recommendations issued in 1990 by the ICRP.**

*Article 9(2). Instruction for workers.* The Committee notes that section 10, paragraph 3, of Decision No. 547/CP of 25 January 1995, provides that any handling of industrial radiography or radioscopy apparatus shall be carried out by an employee having received special training. The Committee also notes that the second subparagraph of this section provides that an exemption to this measure may be granted by the Director of Labour in the case of electrical generators for fixed X-ray machines. **The Committee requests the Government to indicate the measures taken or envisaged to ensure that all workers directly engaged in radiation work are duly trained as well as to indicate the criteria according to which the exemptions provided for in section 10, paragraph 3, subparagraph 2, of Decision No. 547/CP of 25 January 1995, are granted.**

*Article 14. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable.* The Committee notes that the legislation envisaged for the application of the Convention does not seem to contain provisions ensuring that no worker shall be employed or shall continue to be employed in work by reason of which the worker could be subject to exposure to ionizing radiations contrary to qualified medical advice. In this context, the Committee wishes to draw the Government’s attention 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 the light of the above indication, the Committee requests the Government to consider appropriate measures to ensure that no worker shall be employed or shall continue to be employed in work by reason of which the worker could be the subject of exposure to ionizing radiations contrary to medical advice and that, for such workers, every effort is made to provide them 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.**

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

## Germany

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1993)**

*Observations by the German Confederation of Trade Unions (DGB).* With reference to its previous observation the Committee notes that the Government has not commented on the observations by the DGB.

*Article 3 of the Convention. Consultations with the social partners. Article 4. Risk assessment. Article 13. Measures to ensure that all workplaces are safe and without risk of injury to safety and health.* The Committee notes that the DGB and its affiliate Union of Construction, Agriculture and Environment Works (IG BAU) state that work in the construction industry is marred by high accident rates. Although there was an overall increase in the total number of occupational accidents and diseases from 2009 to 2010 in both relative and absolute terms, the DGB maintains that the occupational accident risk for workers in the construction industry is far above the average for workers in Germany. Construction workers also tend to take early retirement and the proportion of older workers to the total workforce in many building trades (such as carpenters, roofers and scaffolders) is significantly lower (13.9 per cent) than the average for all occupations (26.5 per cent). In addition, the number of workers in the building trades applying for disability benefits is also higher than the average for all workers; and out of every 100 roofers and scaffolders who retire, 56 are on disability benefits, compared to 23 persons out of 100 for all occupations. The DGB considers that the cause for this is the widespread failure to enforce existing standards for occupational safety and health protection. On average, there is just one labour inspector for every 10,000 industrial workers. Furthermore, an important feature of the construction industry is the large number of small enterprises whose occupational safety and health standards are rarely inspected. Finally, the IG BAU considers there to be a great need for improvement in the regulatory sphere by, inter alia, by lowering to 25 kg the maximum permissible weight for all construction materials packed in sacks, and by introducing more stringent limits for soot and particle emission from construction machines. The Committee notes with **concern** that the statistical information provided by the DGB and the IG BAU appears to reflect a significant and disturbing situation regarding construction workers which calls for action on the part of the Government in the form of further analysis of the cause for the above average accident risk for construction workers and for the above average number of construction workers on



disability benefits. **The Committee urges the Government to take all relevant measures as soon as possible to address the issues raised by the DGB and the IG BAU, in consultation with the most representative organizations of employers and workers, and to provide detailed information on the measures taken and their impact.**

**The Committee also requests the Government to respond to the remaining issues in its 2011 observation which read as follows:**

*Article 30(1). Provision of personal protective equipment.* The Committee notes the detailed information provided by the Government regarding the implementation of the provision of the Convention based on a consistent application of a risk management approach. The Committee notes in particular that the Government underscores that the objective of the relevant legislation – including the ordinance on the use of personal protective equipment (PPE) – is to arrive at the independent management of safety and health protection by enterprises, the core elements of such management being: risk assessment; the information and training of workers; and the inclusion of workers in decision making processes of the enterprise having regard to safety and health at work. The Government further states that therefore, as a rule, the Occupational Safety Act and the ordinances based on risk management lay down only essential framework conditions so as not to prevent employers and workers from achieving the level of autonomous action that is the aim of legislation; that these general requirements are underpinned by more concrete sub-statutory sets of rules and that employers implementing these rules can assume that they comply with the legal requirements. The Government indicates however, that a deliberate choice was made not to draw up a set of rules of this kind to assist with the implementation of the ordinance on the use of PPE as, according to the general principles set out in article 4 of the Occupational Safety Act, individual protective measures such as the wearing of PPE are subordinate to technical and organizational protective measures. The Government further states that as a result, PPE may be used either only in addition to other protective measures or only if risk assessment has showed that technical or organizational measures cannot be taken at all or merely to an extent that is considered insufficient. The Government goes on to emphasize that it should further be taken into consideration that the use of PPE in itself can impair or damage health, and that it is not advisable for the legislator to prescribe the compulsory use of PPE in certain work situations on construction sites as is impossible for all possible constraints to be covered by legislation; and that therefore only the employers can take all constraints into consideration, based on individual situation-related risk assessments. The Government also refers to the fact that other legislation specifically requires the provision and use of PPE if certain limit values are exceeded (for example the noise and vibration protection ordinance, hazardous substances ordinance and technical rules accompanying the hazardous substances ordinance, notably TRGS 500). Finally the Government indicates that the statutory accident insurance companies have made available a number of practical guides to help employers select appropriate PPE in areas including for example on the use of breathing equipment and on retaining best and coupling mans for retaining belts. The Committee wishes to recall that this approach places high demands on the enforcement of the provisions on risk assessment and their effective application in practice. **The Committee requests the Government to provide further detailed information on the application of this approach in practice including examples of the methods used to ensure such an effective implementation of this Article in practice.**

*Part VI of the report form. Application in practice.* The Committee notes the information provided regarding the elaboration of the common occupational safety and health strategy between the competent inspectorates of the Länder and the statutory accident insurance institutions, in which they agreed on core activities and harmonized information, advisory and implementing measures to reduce accidents and occupational diseases in the construction sector, in particular in building and assembly scaffolding and demolition, but that no interim reports are available for the reporting period. **The Committee asks the Government to provide further detailed information on the impact of this common approach on the number of occupational accidents and diseases in the referenced sectors. In that context the Committee requests the Government to also provide information on whether and to what extent particular attention is given to occupational safety and health in demolition work involving demolition of buildings containing asbestos and any information on the incidence of asbestos related diseases among construction workers.**

## Guatemala

### **Maximum Weight Convention, 1967 (No. 127) (ratification: 1983)**

*Articles 3 and 7 of the Convention. Maximum weight of loads transported by an adult worker.* For more than ten years the Committee has been repeatedly asking the Government to amend section 6 of Agreement No. 885 of the Executive Board of the Guatemalan Social Security Institute (IGSS), and has noted the Government's statement in successive comments that approval of the Occupational Safety and Health Regulations was imminent and that the latter would form the basis for amending the aforementioned Agreement. According to section 6 of the Agreement, the maximum weight that can be lifted by an able-bodied male under 60 years of age is 120 lb (60 kg) and the maximum weight that can be lifted by an able-bodied female under 50 years of age is 60 lb (30 kg). In its previous comments, the Committee has repeatedly asked the Government to take steps to amend Agreement No. 885 and, in the meantime, to take the necessary steps to ensure the full and binding application of these provisions of the Convention and to supply information in this respect. The Committee notes that the Government has not supplied any information on the amendment of the Agreement and the possible approval of the Occupational Safety and Health Regulations. It also notes a report from the IGSS attached to the Government's report, according to which the maximum recommended weight under ideal handling conditions is 25 kg and that women, young workers and older workers should not handle loads exceeding 15 kg. The report indicates that under special circumstances able-bodied, trained workers could handle loads up to 40 kg, provided that such work is occasional and performed under safe conditions. The report also refers to appropriate postures and preventive measures where the indicated weights are exceeded, mentioning as an example the use of mechanical aids and the lifting of loads by two or more persons. The Committee notes that the measures indicated in the report give effect to these provisions of the Convention but that they are not binding. It notes the discrepancy between these IGSS recommendations and Agreement No. 885, also of the IGSS, which is binding. **The Committee requests the Government to take the necessary measures to bring IGSS Agreement No. 885 into conformity with the Convention, possibly using**

*as a basis the Maximum Weight Recommendation, 1967 (No. 128), and the IGSS recommendations which the Government attached to its report, and to send information on any further developments in this regard.*

*Article 5. Steps to ensure that workers receive adequate training or instruction in working techniques, with a view to safeguarding health and preventing accidents. The Committee again requests the Government to provide information on the form of the training and instruction that is given to workers before they are assigned to work involving the manual transport of loads, and to include information on the IGSS recommendations.*

*Article 7. Young workers.* The Committee notes the Government's statement that section 7 of Agreement No. 885 states that young persons over 13 years of age may lift, transport or move loads with weights appropriate to their respective ages, provided that this does not jeopardize their health or safety. The Committee refers to Paragraphs 19–23 of Recommendation No. 128, and in particular Paragraph 21, which states that where the minimum age for assignment to manual transport of loads is less than 16 years, measures should be taken as speedily as possible to raise it to that level, and Paragraph 22, which states that the minimum age for assignment to regular manual transport of loads should be raised, with a view to attaining a minimum age of 18 years. *The Committee requests the Government to take the necessary steps to bring its law and practice into conformity with the Convention, to consider the guidance given by Recommendation No. 128, and to provide information on this matter, including detailed information on the sectors in which young persons perform tasks involving the manual transport of loads.* The Committee also refers to this matter in its comments on the Minimum Age Convention, 1973 (No. 138).

*Part V of the report form. Application in practice.* In its previous comments the Committee noted 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. The Committee asked the Government to clarify on what legal basis workers could make complaints. The Committee notes that the Government has not provided any information in this respect and that the statistics supplied do not refer to the matters covered by the present Convention. *The Committee requests the Government to clarify whether the labour inspectorate conducts inspections in the areas covered by the Convention and applies the relevant provisions to both scheduled inspections and the handling of complaints. The Government is also requested to indicate the sectors of activity with the greatest concentrations of workers who handle loads, including the extent to which such activity occurs in agriculture and mining and the manner in which the Government ensures the application of the provisions of the Convention.*

### **Asbestos Convention, 1986 (No. 162) (ratification: 1989)**

*Article 3 of the Convention. Measures to be taken for the prevention and control of health hazards due to occupational exposure to asbestos.* In its previous comments the Committee noted the Government's indication that draft Occupational Safety and Health Regulations would form the foundations for regulation of the use of asbestos and that it was planned to draw up specific technical standards on the prevention of hazards arising from the use of asbestos. In view of the fact that the information available did not enable it to gain a full picture of the application of the Convention, the Committee asked the Government to supply a detailed report. The Committee notes with *regret* that, according to the Government's brief report, no law has been adopted in Guatemala which regulates the use of asbestos. From its initial comments onwards, the Committee has repeatedly asked the Government to adopt the necessary legislative measures to give effect to the Convention. The Committee reminds the Government that under article 19(5)(d) of the ILO Constitution, any member State which ratifies a Convention undertakes to "take such action as may be necessary to make effective the provisions of such Convention". The obligation does not merely consist of incorporating the Convention into national law but also entails the need to enforce its application in practice and give effect to it in legislative terms by any other measures that are in conformity with national practice, such as those provided for by the Convention (for example, court decisions, arbitration awards or collective agreements). Furthermore, the Convention requires national law to regulate certain matters covered by various Articles of the Convention, such as *Article 9* (prevention and control measures), the effective application of which depends on the legislation adopted pursuant to *Article 3* of the Convention; *Article 11* (prohibition of the use of crocidolite); *Article 12* (prohibition of spraying of all forms of asbestos); and *Article 13* (employers' obligation to notify the competent authority of the types of work involving exposure to asbestos). In the case of *Article 13*, the Government indicates "none" in its reply. The Committee understands this reply to indicate that no type of work involving exposure to asbestos has to be notified to the competent authority. The Committee notes with *concern* that no progress has been recorded in the implementation of the Convention, more than 20 years after its ratification. Nor does the report contain any indication that any action is being taken by the Government to ensure the application of the Article of the Convention in practice, wherever possible given the absence of legislation in this area. *The Committee therefore urges the Government to take the necessary steps to give legislative effect to the Convention and to supply detailed information on this matter. The Committee invites the Government to submit a formal request for technical assistance from the Office in this respect.*

*Article 4. Consultations with the most representative organizations of employers and workers concerned regarding the measures to be taken to give effect to the provisions of the Convention. The Committee urges the Government to undertake all possible efforts to ensure that consultations are held as soon as possible, with the most representative organizations of employers and workers concerned, on measures to be taken to give effect to the provisions of the Convention and to provide detailed information on the outcome of these consultations.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## 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, 3(1), 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 the information that no legislative changes have yet been undertaken but that a new Labour Code is being prepared, and that section 231.3 of this Labour Code will resolve the question raised by the Committee previously. *The Committee is required to recall that since 1998 it has been asking the Government to make every effort to take the necessary action in the near future to ensure full compliance with the Convention. The Committee requests the Government to submit a copy of all relevant legislation to the Office once it has been adopted.* In the meantime the Committee must repeat its previous comment 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.*

## **Hygiene (Commerce and Offices) Convention, 1964 (No. 120)** (ratification: 1966)

*Legislation.* The Committee notes the information that no legislative changes have yet been undertaken but that a new Labour Code and related legislation – including in the areas of the distribution of drinking water and sanitary facilities at enterprises – which will take into account the comments by the Committee under this Convention, is still being prepared. *The Committee must therefore repeat its statement 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 orders 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 notes the affirmation by the Government that all workers in the public as well as private sectors, are covered by occupational safety and health provisions. *The Committee requests the Government to provide further information about the relevant legislation in this respect. To the extent that such legislation has not yet been adopted, it hopes that the Government will take the necessary measures in the near future to ensure a 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. Application in practice.* The Committee notes the information that the Labour Code covers all workers in the private sector, that the 100,000 public sector workers are covered by public service legislation. It also notes the information that 11 technical occupational safety and health inspections were conducted in the course of 2011, but that no information was provided regarding the outcome of these inspections. *The Committee wishes to draw the Government's attention to the fact that the information that it is requested to provide in this respect includes, inter alia, 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.*

## **Benzene Convention, 1971 (No. 136) (ratification: 1977)**

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

## **Kuwait**

### **Benzene Convention, 1971 (No. 136) (ratification: 1974)**

*Article 6(3) of the Convention. Measurement of the concentration of benzene. Part IV of the report form. Application in practice.* The Committee notes the response provided by the Government concerning the periodical labour inspection visits carried out by the Industrial Environment Department at the Public Authority for the Environment, in workplaces at which workers are exposed to the risks of benzene vapours. The Committee notes, however, that the special memorandum on exposure to benzene and the results of field visits mentioned in the Government's report have not been received. **The Committee requests the Government to provide information on the manner in which the Convention is applied, including extracts of inspection reports and data on the number of workers covered by the Convention disaggregated by gender, if possible, and the number and nature of the infringements recorded.**

## **Kyrgyzstan**

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (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:

The Committee 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.*

## Mexico

### Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)

#### Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)

#### Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)

The Committee is following up the recommendations made in the report adopted by the Governing Body in March 2009 (*document GB.304/14/8*) in relation to the accident that occurred at the Pasta de Conchos coalmine in Coahuila. In its comments in 2011, the Committee noted the discussions in the Conference Committee on the Application of Standards in June 2011 and its conclusions, a communication from the National Union of Federal Roads and Bridges Access and Related Services (SNTCPF), the Government's report and the Government's observations on a communication from that union received in 2010. The Committee observed that the discussion and conclusions of the Conference Committee on the Application of Standards also referred to the follow-up of the report on the representation and, in that context, to the application of the Convention to workers in coalmines in Coahuila. The communications of the trade union in 2010 and 2011 also referred to the same situation. The Committee notes the Government's detailed report and a communication from the National Union of Workers (UNT). The UNT asserts that the Government has not provided reliable information to the public on the number of accidents, the general conditions of work and the organizations representing formal and informal workers engaged in the so-called *pocitos* (small-scale mines or pits), and it is unsure whether such information is included in the reports. It provides information on further occupational accidents, which have cost the lives of miners, and which was published in the media. *The Committee invites the Government to provide the comments that it considers appropriate in relation to the communication of UNT.*

#### 1. Measures to be taken in consultation with the social partners

Articles 4(1) and (2), and 7 of the Convention. *National policy. Overall reviews or reviews relating to specific areas: hazardous types of work such as those performed in the coalmining sector.*

(a) *Register of reliable data on existing mines and workers in these mines.*

*Background.* In its previous comments, the Committee noted that, according to the Government, in Coahuila there are 909 mining concessions covering a surface area of 2.5 million hectares and that there are nine large coalmines and 62 medium-sized mines. With regard to the *pocitos*, the Government indicated that, as from March 2010, the GeoInfoMex satellite system was used for the location of such small-scale mines or pits, and that the project ended in May 2011. This resulted in the identification of 563 vertical shafts, in 297 of which activity was detected, which will be inspected. The Committee noted the distinction drawn by the Government between the registration of mining concessions and the registration of workplaces, and its indication that progress is being made in terms of coordination between the various State bodies connected with mining in Coahuila. The Committee requested the Government to continue supplying updated information on the number and type of mines and, recalling the request made by the Conference Committee on the Application of Standards, asked it to distinguish in that information between registered and unregistered mines. The Committee also requested the Government to indicate the estimated total number of miners in Coahuila, the number of registered miners and the estimated number of unregistered miners. These are two different but complementary issues that form part of the application of the Convention in all workplaces and to all workers at the workplace, for which reason it requested the Government to take the necessary measures to keep the fullest possible records in this respect and to provide information on this subject.

*The 2012 report.* The Committee notes the Government's indication that, according to the information provided by the General Directorate of Mines of the Secretariat of the Economy, as of May 2012, there were 30,458 current concessions at the national level, of which 2,463 are located in the State of Coahuila; of these, 970 are coalmines of which 297 are small-scale mines or vertical shafts. With reference to the 297 small-scale mines or vertical shafts identified in Coahuila, of which the Committee took note in its previous comments, 149 have been inspected. The Government indicates that, with regard to the estimated number of miners, according to the inspections carried out by the labour authorities, 24,527 workers have been detected, and that the Mexican Social Security Institute (IMSS) has a record of 95,000 workers in the mining sector. An inter-institutional group has been established composed of the Secretariat for the Economy, the Mexican Social Security Institute, the Office of the Federal Attorney for the Protection of the Environment, the Office of the Federal Attorney for the Defence of Labour and the Secretariat of Labour and Social Welfare (STPS), for the purpose of exchanging databases so as to develop a single register of enterprises engaged in mining. The Committee notes that the information provided does not indicate whether the 24,527 workers referred to by the Government are located in Coahuila or at the national level, or whether they consist of registered or unregistered workers. With regard to the figure of 95,000 workers, this appears to refer to the national level, and not only to Coahuila. The Committee observes that the information provided by the Government does not correspond fully to the requests made by the Committee in its most recent comment. The Committee hopes that the new working group will contribute to improving coordination and the compilation of reliable and clear data, as a basis for making progress in improving the safety and health conditions in mining. ***The Committee once again requests the Government to provide information on the number and type of mines in Coahuila, including: (1) information distinguishing between registered and unregistered mines; (2) the total estimated number of miners in Coahuila; (3) the number of registered miners; and (4) the estimated number of unregistered miners.***

*(b) Accidents in the coalmining sector.*

*Background.* In its previous comments, the Committee noted that, according to the Government, over the past ten years (2001–10), the IMSS has registered 38,069 occupational accidents and diseases in the mining sector and 340 fatalities. The Government indicated that, if a comparison is made between 2001 and 2010, the number of workers in the mining industry increased by 35.74 per cent and that, in terms of the number of fatalities, there was no significant change (31 in 2010 and 30 in 2001). The Committee noted that, according to a communication by the SNTCPF, between June 2010 and August 2011, 33 more miners died in occupational accidents, including 26 in Coahuila; 14 miners died on 3 May 2011 in Pit No. 3 of the BINSÁ company, none of whom were registered with the IMSS, including one miner under 14 years of age. In 2011, the Committee requested the Government to continue providing detailed information on these matters, including on accidents in coalmines and on the application of the Convention in the mines where the accidents occurred.

*The 2012 report.* The Committee notes the Government's indication that the labour authorities have at all times supported the families of the deceased workers, including through the lodging of applications for work-related benefits, and that it provides details in this regard. In this respect, the Federal Arbitration Board handed down decisions supporting the claims, although they have not yet been executed as the parties can still appeal. The Government provides information on the various forms of assistance provided for the families. The Committee also notes the tables attached by the Government, and particularly the table entitled "Accidents in the mining industry", which refer to certain accidents, the number of violations detected, the fines imposed and whether charges were made or are being brought. However, this information does not give the Committee an overview of developments in relation to occupational accidents in the coalmining industry, and whether their numbers have fallen or remained stable. ***The Committee requests the Government to provide statistical data on the number of occupational accidents in the coalmining industry, and particularly in Coahuila, with an indication of the number of accidents and victims since 2010 and up to the time of the preparation of the next report, with a distinction being made between accidents occurring in so-called "pocitos" and in medium-sized or large mines.***

*(i) The Lulú mine.* In its previous comments, the Committee noted the information provided by the SNTCPF indicating that two workers died in the Lulú mine on 6 August 2009. According to the trade union, the mine has been in operation since 2001, but has never been inspected. In its 2011 report, the Government indicated that it had been planned to carry out an inspection in the Lulú mine in August 2009, but that the accident occurred on 6 August, before the inspection, so that an emergency inspection was carried out from 7 to 10 August, followed by another inspection on 13 and 14 August, and access was then restricted. The Committee also noted that the 2011 communication of the SNTCPF included as an appendix Recommendation 12/2011, of 29 March 2011, of the National Human Rights Commission (CNDH), which has constitutional status, concerning the accident in the mine. In its examination of the case, the CNDH states that "with the omissions described above on the part of the public servants of the Secretariat for Labour and Social Welfare (STPS) and the Secretariat for the Economy, operations at the enterprise were allowed under conditions that did not guarantee the integrity and the health of the workers, and they were placed in grave danger and were exposed to situations such as the one which resulted in the deaths (of two workers)". The CNDH added that this situation was in violation of *Articles 7 and 9* of the Convention. In its 2012 report, the Government indicates that the representatives of the Office of the Federal Attorney for the Defence of Labour (PROFEDET) provided advice and legal representation to the widows, one of whom explicitly declined them, while the other did not come to the offices of the PROFEDET, for which

reason it is assumed that she declined its services. The Government adds that the STPS accepted the recommendation of the CNDH, emphasizing that all times it discharged its functions of vigilance and verification in the mine in which the accident occurred. ***The Committee requests the Government to indicate whether an inquiry has been held regarding the accident, as provided for in Article 11(d) of the Convention, and its findings, particularly on the causes of the accident.***

(ii) *The Ferber pocito mine.* In its previous comments, the Committee noted that, according to the SNTCPF, on 13 August 2009, the periodic inspection of the mine was conducted and, leaving aside the provisions that do not apply to small-scale operations, 85 breaches of the regulations were reported and 76 corrective measures were ordered, and access was restricted. On 11 September 2009, a worker aged 23 died. The union adds that the labour inspectorate only appeared on 17 September 2009 to note or verify the implementation of the corrective measures ordered. It alleges that the STPS is negligent. The Committee noted that in the examination of the case conducted by the CNDH (Recommendation No. 85/2010 of 21 December 2010), it affirmed in similar terms that the provisions of the Convention were breached. In its 2012 report, the Government provides information on the action taken by the PROFEDET to obtain a higher benefit for the widow, and indicates that it achieved a higher sum than that originally granted. The Government adds that the STPS accepted the recommendation of the CNDH and recognized that its institutional responsibility consists of monitoring safety conditions in enterprises and punishing violations. ***The Committee requests the Government to provide information on whether the applicable regulations require follow-up inspections within a fixed period when one or a substantial number of violations are reported or corrective measures ordered, and to provide details on the time frame stipulated for such follow-up. The Committee further requests the Government to indicate whether an inquiry has been held regarding the abovementioned accident as provided for in Article 11(d) of the Convention, and its findings, particularly on the causes of the accident.***

***The Committee also asks the Government to report whether inquiries have been held in accordance with Article 11(d) of the Convention, where cases of occupational accidents – in this case in the coalmining sector in Coahuila – appear to reflect serious situations, and also to report the findings of such inquiries, particularly as regards the causes of such accidents.***

In its previous comments, the Committee noted the Government's statement that the Lulú mine and the Ferber pocito mine are not covered by the recommendations adopted by the Governing Body in its report on the representation, but that the Government was providing information on this subject to clarify such matters. The Committee indicated to the Government that information on accidents in these mines actually forms part of the follow-up to the recommendations made by the Governing Body, as the recommendation in paragraph 99(b)(i) of the report refers to ensuring the application of *Articles 4 and 7* of the Convention, with particular emphasis on coalmines, and the recommendation in paragraph 99(b)(iii) of the report refers to ensuring the application of *Article 9* of the Convention "in order to reduce the risk that accidents such as the accident in Pasta de Conchos occur in the future". The Committee therefore indicated that information on accidents in coalmines in Coahuila and the analysis of their causes contribute to determining the real impact of the measures adopted and understanding whether everything was done that could reasonably have been expected to avoid or reduce as far as possible the causes of the hazards inherent in the working environment, in accordance with *Article 4(2)* of the Convention.

The Committee also drew the Government's attention to the fact that the recurrence of accidents in mines which had manifestly failed to adopt the requisite occupational safety and health (OSH) measures, highlights the need to reinforce government action to ensure the application of the Convention in practice. The Committee therefore urged the Government to undertake, in accordance with *Articles 4 and 7* of the Convention, and in consultation with the social partners, the periodic examination of the situation relating to the health and safety of workers and the working environment in coalmines in Coahuila, including the *pocitos* mines, with a view to identifying the principal problems, drawing up effective measures to resolve them, defining the order of priority of the measures to be taken and evaluating their results. The Committee also urged the Government to provide detailed information on this subject, including on the consultations held.

The Committee notes the Government's indication that the forum for drawing attention to the OSH situation in coalmines in Coahuila consists of the National Occupational Safety and Health Advisory Commission (COCONASHT), the State Occupational Safety and Health Advisory Commissions (COCOESHT) and the State Occupational Safety and Health Advisory Subcommissions (SUBCOCOESHT). The Government adds that in 2008, a SUBCOCOESHT was created with the task of establishing appropriate measures to create safe conditions for workers in coalmines in Coahuila, and has held meetings with the social partners. The Committee notes with *interest* the information provided concerning the action taken or planned, as described below. The Government refers to an inspection programme with five main priorities: (1) the completion of the full register (work will continue on completing a list of mines and mineshafts to be visited with a view to updating the databases of the participating authorities); (2) documentary requirements (enterprises which have not been inspected previously will be required to provide documentation demonstrating compliance with the respective standards); (3) inspections (which will be programmed in workplaces where inspections have been carried out before or where the records show repeated failures to comply with the regulations); (4) large-scale mining (targeting ten mines with a large number of workers); and (5) promotion (with the objective of promoting compliance with the various official Mexican Standards, and specifically NOM-032-STPS-2008 on safety in underground coalmines). The Government also provided information on the training and support activities undertaken by the Government of the State of



Coahuila and the Federation of Coal Producers; the preparation in 2011 of a guide to assess compliance with safety and health standards for small-scale coalmining operations; and training for STPS staff, with courses being undertaken between January 2011 and May 2012 with 154 participants. Furthermore, on 28 March 2012, the STPS concluded an agreement with the CNDH for the consolidation of a human rights culture among public officials in the STPS, with particular reference to inspectors.

Nevertheless, the Committee emphasizes that the purpose of the reviews envisaged in *Article 7* of the Convention is to identify major problems, evolve effective methods for dealing with them and priorities of action, and evaluate results, and that the Government has not provided information on all the points raised. ***The Committee once again requests the Government to indicate whether, in conformity with Articles 4 and 7 of the Convention and in consultation with the social partners, periodic examination has been undertaken of the situation relating to the health and safety of workers and the working environment in coalmines in Coahuila, including the pocitos mines, and to provide information on the following issues which, in accordance with Article 7 of the Convention, constitute the purpose of such examinations; (a) the major problems identified; (b) the methods proposed to deal with them; (c) the priorities for action; and (d) the evaluation of the results. Please also indicate the organizations of workers and employers represented and whether miners' organizations participated in the examination.***

*Article 9. Adequate and appropriate system of inspection.* In its previous comments, the Committee noted that the Lulú mine, which the Government closed on 10 February 2011, was first inspected on 7 August 2009, the day after the death of two workers, and that numerous irregularities relating to OSH were reported but that in spite of this the closure of the mine took 17 months. In the case of the Ferber pocito mine, the owner undertook the closure. The Committee referred to the Government's statement that the inspectors enforced the existing regulations. The Committee considered that, in such a case, the regulations do not appear to constitute a framework that ensures an appropriate and adequate inspection system for safeguarding the lives, safety and health of workers in underground coalmines. The Committee also reminded the Government that in its recommendations the Governing Body asked it to 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, in consultation with the social partners. The Committee therefore requested the Government to examine, as part of the review required pursuant to *Article 7*, the manner in which the labour inspectorate can be strengthened, particularly in cases of imminent danger, and to provide information on this matter and also on the measures of immediate enforcement currently available to the labour inspectorate, including closure, in the event of imminent danger to the health and safety of the workers. It also requested the Government to undertake an analysis of the inspections conducted, concerning which it provided information to the Committee, in order to identify the principal problems with a view to achieving greater effectiveness of inspection activities in coalmines, and also to provide information on the measures proposed to address these problems. Pending the above reviews, the Committee urged the Government to take the necessary measures very rapidly to safeguard the lives and safety of the workers and to provide information on this point. The Committee notes that, according to the Government's 2012 report, the STPS has established protocols for conducting safety and health inspections in mines, and that it also refers to the Guide for assessing compliance with safety and health regulations in small-scale coalmining operations. The Committee also notes the various measures for the strengthening of labour inspection, which are taken into account in various paragraphs of the present comment. The Government also refers to training courses and an increase in the number of federal labour inspectors, with 400 new inspectors envisaged in the budget for 2012. Reference is also made to the Support System for the Inspection Process (SAPI), through which the annual inspection programme will be generated at the central level, harmonization of records of violations and the measures ordered will be harmonized and greater control will be exercised over inspection activities in general. Work is also being undertaken for the specialization of inspectors in occupational safety and health regulations. With regard to measures of immediate enforcement, including closure, the Government indicates that all the measures proposed during a safety and health inspection within the mine shall be of immediate enforcement and permanent compliance and, in situations involving an imminent risk to the safety, physical integrity and life of workers, access to the interior of the mine has to be restricted in part or in full, with the reasons being given before the order is issued. In cases of failure to provide training to workers on the safety and health aspects of their work, their immediate withdrawal from the working area shall be ordered until compliance with this requirement is certified, where there exists a serious danger to the safety and health of the worker. The Committee nevertheless notes that the information provided previously, both by the Government and the SNTCPF, particularly regarding the Lulú mine, which took 17 months to close, does not appear to show that the inspectorate can, among its immediate powers, order the closure of the enterprise. The Committee notes that this point was not clarified by the information provided by the Government. ***The Committee once again requests the Government to indicate the measures of immediate enforcement currently at the disposal of the labour inspectorate, and to indicate clearly whether closure is among the measures of immediate enforcement in the case of imminent danger to the health and safety of workers.***

*Request for information on any developments concerning the possible ratification of the Safety and Health in Mines Convention, 1995 (No. 176), based on Mexican Official Standard NOM-032-STPS-2008 respecting safety in underground coalmines.* In its previous comments, the Committee requested the Government to provide information on the results of the consultations held on 18 July 2011 with the Confederation of Chambers of Industry (CONCAMIN), the Employers' Confederation of the Republic of Mexico (COPARMEX), the Confederation of Workers of Mexico (CTM) and the Mining and Metallurgy Union. The Committee notes the Government's indication that on 17 August 2012, with a view to

complying with the requirements set out in article 19 of the ILO Constitution respecting submission, the conclusion of the review of Convention No. 176 was transmitted to the Office of the Legal Advisor of the Secretariat for Foreign Relations so that the Senate can consider whether to ratify the Convention. ***The Committee once again requests the Government to provide information on the developments relating to the ratification of Convention No. 176, including information on any obstacles identified concerning its ratification.***

## II. Technical assistance

In its previous comments, the Committee invited the Government to request technical assistance from the Office in relation to the possible ratification of Convention No. 176. The Conference Committee on the Application of Standards, in its 2011 conclusions, also invited the Government to request technical assistance from the Office. In its most recent comments, the Committee indicated that, in view of the difficulties of application that persist in the coalmining sector, it once again invited the Government to avail itself of technical assistance from the Office in order to address these problems and it requested the Government to notify the Office of its decision in this regard. The Committee notes the Government's statement that it can be seen from the information provided that the STPS has strengthened the action of the Federal Labour Inspectorate through an adequate inspection programme, although it nevertheless indicates that, if necessary, it will avail itself of the technical assistance of the Office. ***Recalling that the invitation to request technical assistance from the Office was related to the possible ratification of Convention No. 176, the Committee once again invites the Government to consider requesting technical assistance from the Office with a view to the possible ratification of Convention No. 176 and to provide information on this subject.***

## III. Other measures

***Compensation – Pensions.*** The Committee notes the information provided by the Government concerning the benefits established by law, the collective contract and also on the situation in relation to the compensation ordered and the appeals of the family members of the workers who died in Pasta de Conchos. With regard to their legal appeals, the Government indicates that, despite having challenged the various measures ordered with a view to raising the daily wages received by the workers, the Supreme Court of Justice of the Nation found that the benefits were to be calculated on the basis of the wage registered with the Mexican Social Security Institute (110–113 pesos/day). It also notes that, as a result of the criminal case deriving from the accident, the enterprise paid to all the dependants of the deceased workers the amount of 182,000 pesos in compensation. The Government also provides information on the payments made by the STPS in accordance with the rulings on claims for State responsibility. ***The Committee requests the Government to continue providing information on pending issues relating to the compensation and pensions of the family members of the deceased workers.***

***State and social benefits.*** The Committee notes that, according to the Government, an educational trust was created for the dependants of the workers of Pasta de Conchos to enable them to continue their studies while receiving financial and academic support, starting with their initial training until the conclusion of their studies. In June 2006, the educational trust covered 111 beneficiaries and, six years after it was created, six recipients of scholarships from the trust have completed their studies. ***The Committee requests the Government to continue providing information on this subject and to indicate how many of these 65 families have received assistance for access to housing.***

***Dialogue with the Pasta de Conchos families.*** With reference to its previous comments, the Committee notes the Government's indication that in 2011 a meeting was held with the Pasta de Conchos Families Organization which covered subjects related to the situation of mining in the Coahuila coal region. With reference to the recuperation of the bodies, the Government reiterates the importance of safeguarding the lives of rescuers, for which reason any possibility of recuperating the bodies has to be based on the fundamental premise of not risking the lives and limbs of other persons. ***The Committee requests the Government to continue the dialogue with the organization and with the families to find an appropriate solution concerning the complaints raised by the families of the victims of the Pasta de Conchos accident and it requests the Government to continue providing information on the dialogue.***

***The Committee also draws the Government's attention to its comments on the application of the Labour Administration Convention, 1978 (No. 150).***

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

## Niger

### ***Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (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:

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

## Rwanda

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1962)**

*Legislation.* The Committee notes the information provided by the Government in its report and, while it notes with *interest* the adoption of Ministerial Order No. 01 of 17 May 2012 determining modalities for the establishment (or creation) and operation of occupational health and safety committees and Ministerial Order No. 02 of 17 May 2012 determining general conditions for occupational health and safety, it also notes that these orders do not include provisions to give effect to the majority of the Articles of this Convention. The Committee welcomes the Government's inclusion of translated copies of these new instruments in its report. The Government also indicates its intention to denounce this Convention and ratify the Safety and Health in Construction Convention, 1988 (No. 167). ***The Committee asks the Government to keep the Office informed of any developments in this respect, and to continue to provide information on any legislative changes undertaken concerning the application of the Convention.***

*Article 1 of the Convention.* The Committee notes that sections 12, 28 and 38 of Ministerial Order No. 2 give effect to *Article 10(3) and (4) and Article 16*, and that while section 21 deals with hoists and lifts, it does not give full effect to the specific requirements of *Articles 11 to 15*. The Committee notes that the remaining Articles of the Convention are not addressed in the attached legislation. ***Recalling that Ordinance No. 21/94 of 23 July 1953 regulating occupational safety in the building industry was repealed in 2001, the Committee reiterates its request that the Government take urgent action to fill the legal void created by this abrogation. It again reminds the Government that the Office is available to provide relevant technical assistance to the Government to assist in its efforts to bring national law and practice into conformity with the Convention.***

*Articles 4 and 6, in conjunction with Part V of the report form. Labour inspection, statistical information and application in practice.* The Committee welcomes the information provided by the Government on the comprehensive exercise currently underway to establish a country profile on occupational safety and health. The Government indicates that this profile will provide statistical information in relation to the number and classification of accidents, including those relevant to workers in the informal economy. The Committee also refers the Government to its comments relating to the application of the Labour Inspection Convention, 1947 (No. 81). ***Recalling that the most recent statistical information received from the Government in relation to the practical application of this Convention is dated from 2003, the Committee accordingly reminds the Government of its obligations under Article 6 of the Convention. The Committee requests the Government to ensure that its next report includes statistical information relating to the number and classification of accidents occurring to persons occupied in work within the scope of this Convention, and any other information relevant to the application of this Convention in practice.***

## Serbia

### **Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (ratification: 2009)**

The Committee notes with *interest* the detailed information supplied in the Government's first report including the National Policy for Occupational Safety and Health, adopted by the Occupational Safety and Health Council on 20 April 2006, the Occupational Safety and Health Strategy (2009–12), the Action Plan for Implementation of the Occupational Safety and Health Strategy (2009–12), and the Law on Occupational Safety and Health of 21 November 2005. It notes in particular the commitment of the Government and the social partners to occupational safety and health issues and their efforts to develop a culture of prevention.

*Article 4(1) and (2)(a) of the Convention. Obligation to establish, maintain, progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers. Legislation.* The Committee notes that in accordance with the Action Plan for Implementation of the Occupational Safety and Health Strategy in the Republic of Serbia for 2009–12, a working group has been established to analyse the application of laws, by-laws and regulations, and to modify the Occupational Safety and Health Act in light of the EU *acquis*. The Committee also takes note of the comments of the Trade Union Confederation "Nezavishnot," transmitted by the Government, stating that the Act on Amendments and Supplements to the Health Insurance Act has not been submitted to either the Social and Economic Council for its opinion, or to the working group mentioned above. According to the union, pursuant to section 9 of the Act on Amendments and Supplements to the Health Insurance Act, occupational accidents have been redefined to exclude injuries that employees may suffer during their trip to or from work. The Committee calls the attention of the Government to *Article 4(1) and (2)(a)* of the Convention, which require consultation with the most representative organizations of employers and workers regarding, inter alia, laws and regulations on occupational safety and health. ***The Committee asks the Government to provide its comments on the communication from "Nezavishnot" and to take the appropriate measures to ensure that***

*laws and regulations on occupational safety and health are developed and reviewed in consultation with the most representative organizations of employers and workers. It also requests the Government to provide details on the mechanisms established for such consultations.*

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

## **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:

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.*

## **Bolivarian Republic of Venezuela**

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)**

The Committee notes the Government's report received on 30 August 2012, a communication from the Independent Trade Union Alliance (ASI), received on 14 August 2012, and forwarded to the Government of 29 August 2012, and the Government's observations on that communication, received on 12 November 2012. The Committee notes that the ASI's communication refers essentially to labour inspection and it will examine it in the context of its examination of the application of the Labour Inspection Convention, 1947 (No. 81). The Committee also notes that part of the ASI's communication refers to matters covered by the Occupational Health Services Convention, 1985 (No. 161), which has not been ratified by the country, and which cannot therefore be examined. Another part of the communication refers to the absence of consultation and the need to improve social dialogue in relation to occupational safety and health (OSH), and to dysfunctions and the need to improve coordination in the administrative structure, which are issues that the Committee has already examined and that it reviews once again in the present comment.

*Articles 7. Reviews, either overall or in respect of particular areas, carried out at appropriate interval; 11(c). Establishment and application of procedures for the notification of occupational accidents; (e). Publication annually of information on measures taken, occupational accidents and occupational diseases, of the Convention.* In its previous comments, the Committee noted the indication by the ASI in 2010 that, according to the National Institute for Occupational Prevention, Safety and Health (INPSASEL), up to the third quarter of 2008, 68,119 serious morbidity accidents had been recorded, compared with 57,000 accidents recorded during the whole of 2007. It added that it is estimated that 90 per cent of occupational accidents are not reported. It also noted that, according to the ASI, INPSASEL would administer the OSH services in six sectors, and that it mentioned the petrochemical, oil, auto-parts and agricultural sectors. It further noted that in its 2011 communication, the ASI referred to the poor state of some installations belonging to the Venezuelan Petroleum Enterprise (PVDSA), adding that trade union leaders were urging the INPSASEL to assume the responsibility for and to supervise gas-filling plants throughout the country, and its observation that workers were not working in appropriate safety and health conditions. The Committee also noted that, according to a communication of the Confederation of Workers of Venezuela (CTV) of 2011, there had been an increase in occupational accidents in relation to ten years previously, due to a deterioration in the working environment. It added that there are no reliable statistics. Furthermore, according to the CTV, the petroleum industry is a case in point as accidents in the industry have increased dramatically over the past eight years and, according to a statement by the Secretary-General of the Federation of Petroleum Workers in August 2011, there were 500 occupational accidents in the industry and 15 deaths in 2011, and the PVDSA had dismissed workers involved in occupational accidents. With regard to the notification of accidents, the Committee noted the Government's indication concerning the procedure with the online reporting of accidents being in its first phase. The Government added that the INPSASEL posts on its web page information on occupational accidents which occurred during the 2005–07 period and on occupational diseases during the period 2002–06. In a communication

received on 2 December 2011, the Government indicated that during the first half of 2011 a total of 29,020 occupational accidents and 1,130 occupational diseases had been reported, but did not provide information on previous years. The Committee notes the Government's indication in its report in 2012 that 30,907 occupational accidents occurred during the first half of 2012, and that 1,328 occupational diseases were declared on the website of the INPSASEL. The Government adds that the INPSASEL is in the process of reviewing and approving the occupational accident statistics for 2008, 2009 and 2010. **The Committee once again requests the Government to make efforts to update the information available on occupational accidents so as to have available effective indicators in due time which will allow it to identify the sectors requiring priority action, so that it is able to review its national policy on the basis of reliable and recent data. It requests the Government to provide information on this subject. Furthermore, noting that the Government has not provided some of the information requested in 2011 on the application of these Articles of the Convention, the Committee requests the Government to: (1) send its comments on the issues related to the increase in the number of occupational accidents and their notification; (2) indicate the trends in relation to occupational accidents by sector and the measures adopted or envisaged to deal with them, including the situation in the PVDSA, referred to in the communication; (3) provide information on the reviews carried out or ongoing in specific sectors, as indicated in Article 7 of the Convention; and (4) indicate the sectoral committees to which it referred in its previous comment, and provide information on their operation and activities.**

*Article 9. Adequate and appropriate system of inspection.* In its previous comments, the Committee requested the Government to indicate the measures adopted to guarantee the effective application of the preventive and protective measures established under the Convention including, but not exclusively, the strengthening of labour inspection. The Committee notes that, according to the report, the INPSASEL has formulated three new procedures for the strengthening of inspection systems: "comprehensive inspections", which adopt a preventive and pluri-disciplinary approach; "updating" actions, focusing on the investigation of occupational accidents and the causes of occupational diseases; and actions in the context of the "Comprehensive Agrarian Inspection Plan" (PIIA). The Committee will examine this information in greater detail in its comments on the application of Convention No. 81.

In 2011, the Committee requested the Government to reply in detail in 2012 to its observation of 2011. Noting that in 2012 the Government provided a brief report which does not contain replies to the various comments contained in its previous observation, the Committee is bound to reiterate those comments, which read as follows:

*Articles 4 and 8 of the Convention. Formulating, implementing and periodically reviewing a coherent national policy on occupational safety, occupational health and the working environment; measures to give effect to this Article by consulting with the most representative employers' and workers' organizations concerned.* The Committee notes that, according to the Government in its report, the principle of the people as participants is a constitutional right set forth in section 5 of the Basic Act on Prevention, Working Conditions and the Working Environment (LOPCYMAT) which gives effect to *Article 4* of the Convention, and that draft legislation, regulations and technical standards are submitted for consultation among the various social partners. The Committee also notes that section 10 of the LOPCYMAT establishes that the Ministry of Labour shall consult the employers' and workers' organizations in respect of its national policy and that it will take into account, for the elaboration of this policy, inter alia, statistics on occupational diseases, accidents and deaths; the Government adds that section 36 of the same Act establishes a National Safety and Health Council with the participation of employers and workers. The Committee notes, however, that the Government has not provided information on the way in which this section of the Convention is applied in practice, indicating, for example, the content of its national policy and whether this policy and its implementing measures have been and are discussed with the most representative employers' and workers' organizations concerned. This implies a process of application and periodical revision in consultation with the most representative employers' and workers' organizations concerned, to ensure an evaluation of the national policy, the basis upon which the scope of future actions is determined. With respect to *Article 8* of the Convention, the Government states that the Assembly puts into practice the so-called "parliamentarism of the street" which consists of discussing a number of bills with the citizens. It also points out that workers' assemblies, workshops with safety officers, meetings with trade union organizations and business associations of a number of productive groups are also held. Furthermore, the Committee notes that, in its comments of 2010, the CTV indicates that the National Institute for Occupational Prevention, Health and Safety (INPSASEL) does not consult the trade union organizations. The CTV adds that the Government should use the tripartite consultation mechanisms established under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), to improve the occupational safety and health conditions and reverse the present trend. The Committee draws the Government's attention to the fact that *Articles 4* and *8* of the Convention refer to consultations on national policy and ways to give effect to these, with the most representative employers' and workers' organizations concerned, and therefore discussions with the citizens does not replace consultations with the said organizations. **The Committee requests the Government to send additional information on the content of its national policy; on the consultations held with the most representative employers' and workers' organizations concerned with respect to the formulation, application and evaluation of its national policy and the measures referred to under Article 8; and on the results of these consultations.**

*Article 5(e). Spheres of action that should be taken into account by national policy; the protection of workers and their representatives from disciplinary measures as a result of the actions properly taken by them in conformity with the policy referred to in Article 4 of this Convention.* The Committee notes that, in accordance with section 44 of the LOPCYMAT, no safety delegate may be dismissed, transferred or demoted in his/her job, from the time he/she is elected until three months after the period for which he/she has been elected, without justified grounds previously approved by the labour inspectorate, in accordance with the Organic Labour Act. **Noting that, according to the ASI communication in 2010, 400 safety delegates were dismissed at the end of the first quarter of 2008, the Committee requests the Government to indicate what its legislation considers "justified grounds" in the context of the said section; to send information on the application of this section in practice, including on the application of dismissal with "just grounds previously approved by the labour inspectorate in accordance with the Organic Labour Act", and on the alleged cases of dismissal of safety delegates.**

*Article 6. Functions and responsibilities. Article 15. Coordination.* With respect to its comments in 2009, in which the Committee noted that, according to the CTV, the LOPCYMAT had not as yet been fully implemented and the Social Security Fund was not yet in operation, the Committee notes that, according to the Government, it is untrue that the LOPCYMAT is not

yet functioning. The Governing points out that in the context of the transition of the social security institutions, certain legal situations of occupational safety and health (OSH) fall within the remit of the Venezuelan Social Security Institute (IVSS); that the entry into force of the Social Security Fund will enable the remaining aspects to come into effect; however, there has not been a deterioration or vacuum with respect to situations regulated by previous laws and regulations. The Committee also notes that, according to the ASI's communication of 2010, another delay with the LOPCYMAT is connected to the appointment of special prosecutors for occupational safety and health matters. In turn, the Committee notes that the Government has not provided the information requested in its previous comment on the difficulties encountered in formally setting up the National Council for Occupational, Safety and Health, to which section 36 of the LOPCYMAT refers. **The Committee requests the Government to indicate whether the National Council for Occupational, Safety and Health is operating and to send information on which aspects and bodies governed by the LOPCYMAT are functioning in practice, and those which are not, as well as the Government's plans to implement the Act in its totality.**

*Other issues. Article 5. Spheres of action that should be taken into account in national policy; Article 11(a)(b) and (d). Functions that should be covered by national policy; Article 12. Obligations on persons who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use; and Article 15. Coherence of the national policy and coordination between the various authorities and bodies responsible for giving effect to Parts II and III of the present Convention. Noting that the Government has not, in its report, provided information on the application of the above Articles, the Committee requests the Government to send information in this respect.*

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

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 13** (Comoros, Guinea); **Convention No. 45** (Guyana, Nigeria, Sierra Leone, Uganda); **Convention No. 62** (Guinea, Ireland); **Convention No. 115** (Ghana, Guyana, Kyrgyzstan); **Convention No. 119** (Bosnia and Herzegovina, Croatia, Ghana, Iraq, Kyrgyzstan, Tajikistan); **Convention No. 120** (France: New Caledonia, Slovakia, Tajikistan); **Convention No. 127** (Algeria, India); **Convention No. 136** (Bosnia and Herzegovina, Guyana); **Convention No. 139** (Bosnia and Herzegovina, Guyana, Ireland, Slovakia); **Convention No. 148** (Bosnia and Herzegovina, Croatia, Malta, San Marino, Slovakia, Tajikistan); **Convention No. 155** (Algeria, Antigua and Barbuda, Australia, Bosnia and Herzegovina, Cape Verde, China, Ireland, Mexico, Tajikistan); **Convention No. 161** (Bosnia and Herzegovina, Chile, Guatemala, Slovakia); **Convention No. 162** (Bosnia and Herzegovina, Canada, Colombia); **Convention No. 167** (China, Serbia, Slovakia); **Convention No. 170** (Burkina Faso, China, Syrian Arab Republic); **Convention No. 174** (Bosnia and Herzegovina, India); **Convention No. 176** (Bosnia and Herzegovina, Ireland, Slovakia, Zambia); **Convention No. 184** (Bosnia and Herzegovina, Burkina Faso); **Convention No. 187** (Bosnia and Herzegovina, Germany, Serbia, Slovakia).

## Social security

### Algeria

#### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1962)**

The Committee notes that the Government has sent detailed information showing that the national legislation gives substantial effect to the Convention but without replying to the questions which have been posed by the Committee for many years. *The Committee therefore requests the Government, in accordance with section 4 of the Inter-Ministerial Order of 10 April 1995, to include in the work programme of the Commission on Occupational Diseases, the question of bringing the schedules of occupational diseases into conformity with the Convention with respect to the following points:*

- *the activities in which there is a risk of exposure to anthrax infection should also include the loading, unloading or transport of merchandise in general so as to cover workers (such as dockworkers) who have unknowingly transported merchandise that has been contaminated by anthrax spores;*
- *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 phosphorus and certain of its compounds (Schedules Nos 5 and 34) must, pursuant to the schedule annexed to the Convention, cover in general terms all the manifestations that may be caused by the above substances (such a wording would also make it possible to cover diseases which may be caused by the use of new products); and*
- *the need for the wording of the various pathological manifestations enumerated in the left-hand column of the schedules of occupational diseases entitled “designation of diseases” to be of an indicative nature, in the same way as the wording for the corresponding types of work in the right-hand column of the schedules.*

### Antigua and Barbuda

#### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1983)**

With reference to its previous comments, the Committee notes that the Government intends to review the entire Workmen's Compensation Ordinance No. 24 of 1956 which is the central piece of legislation giving effect to the Convention, and that first contacts have been established with the Office in order to receive technical assistance in this respect. Recalling that the Government has been expressing its will to reform this Ordinance since 1986, the Committee hopes that, in collaboration with the ILO, the Government will be able to develop a comprehensive and coherent system of accident compensation that will give full application to the following provisions of the Convention:

- *Article 5 of the Convention (Compensation in the form of a lump sum). Section 8 of the Ordinance should be amended so as to ensure that the compensation due in the event of accidents causing permanent incapacity shall be paid in the form of periodical payments, or exceptionally in a lump sum only if the competent authority is satisfied that it will be properly utilized.*
- *Article 7 (Additional compensation for assistance by a third person). Section 9 of the above Ordinance should be amended so as to grant additional compensation for victims of injuries who need the assistance of a third person in cases of permanent incapacity.*
- *Article 9 (Medical and pharmaceutical treatment). Section 6(3) of the Ordinance should be amended so as not to prescribe any limit to the expenses and costs of medical treatment undergone by a worker as a result of an occupational accident for which the employer is responsible and include an express provision for coverage of related surgical and pharmaceutical costs.*
- *Article 10 (Provision of surgical appliances and artificial limbs in general). Section 10 of the Ordinance should be amended to provide for surgical appliances and artificial limbs in all cases in which they are necessary, and not only with a view to improving the earning capacity of the person concerned.*

### Argentina

#### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1950)**

The Committee notes the Government's report, which contains a reply to the Committee's direct request of 2007, as well as the observations on the Government's report submitted by the Confederation of Workers of Argentina (CTA)

received on 31 August 2012 and 7 September 2012 and by the General Confederation of Labour (CGT) received on 21 September 2012.

*Legislative amendments.* The Committee notes that both the CTA and the CGT call for a comprehensive and substantial reform of Act No. 24.557 on occupational risks (LRT) of 1995. The CGT underlines the LRT's lack of adherence to the national Constitution and the inequality of its reparatory system. The union calls for a more comprehensive law, which would include all occupational diseases and accidents and puts forward a list of solutions that should be addressed, namely: assistance of workers by legal counsel or by a member of the worker's union before system-specific commissions; unification of criteria used by the medical commissions; amending the criminal code by establishing system-specific penalties; offering the option of lump-sum payments in case of total permanent invalidity; joint liability of the private entities responsible for repairing occupational risks (ART) where employers omitted to communicate to the authorities, knowingly or unknowingly, breaches of hygiene and safety rules which resulted in injuries and prejudice to the workers; mandatory coverage by ART of all work-related contingencies until the medical commission can mediate and there is full compensation of the damage. The CTA deems that ARTs pursue profit-oriented objectives and are therefore interested in reducing the reparations awarded to victims of occupational injuries. The CTA also underlines that the list of occupational diseases included in the LRT is closed and exhaustive, leading to the exclusion of a number of occupational diseases, recognized as such by national courts, and that the problem is aggravated by the absence of a judicial mechanism to review the decisions taken by the Central Medical Commission regarding the application for benefits in cases of occupational accidents and diseases. Given that a worker's only capital is their labour force, the CTA asserts the need to fully compensate a worker's physical and mental injury and considers that future legislation should be based on the concept of the full reparation of work injuries, referring in this respect to the guidelines set by the Supreme Court.

With regard to the trade unions' call for reforming the workmen's compensation legislation in Argentina, the Committee understands that in October 2012, Act No. 26773 on compensation for damages as a result of employment injury was adopted and that it revises certain aspects of Act No. 24.557. ***The Committee requests the Government to reply to the comments of the CTA and the CGT and to indicate how current legislation as a whole gives effect to the obligations contained in the various provisions in the Convention.***

*Article 2 of the Convention. Scope of application.* In the comments of 31 August 2012, the CTA denounced the lack of automatic access to medical aid by non-registered workers due to the fact that insurance companies receiving their claims do not have them listed as workers with the employers with whom these insurance companies have agreements. In consequence, non-registered workers have to remedy work-related illnesses and accidents at their own expense. ***Recalling that the Convention covers all workers, employees and apprentices, the Committee asks the Government to explain in detail how the Convention is applied to workers who are not registered by employers; who guarantees these workers compensation and payment of medical expenses in case of occupational accidents; and what penalties are imposed on the employers who fail to comply with the obligation to insure their workers against occupational accidents.***

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 2013.]***

### ***Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1950)***

*Review of the national list of occupational diseases.* With reference to its previous observation, the Committee takes note of the comments brought forward by the Confederation of Workers of Argentina (CTA) received on 31 August 2012 indicating that the current list of occupational diseases of Act No. 24.557 is too restrictive and violates the Convention by discarding all diseases that do not meet the triple criteria of the concurrence of listed risk agents, pathological symptoms, and occupational exposure and thus obliging the worker to provide proof of the concurrence of these three factors in order to receive compensation. In comparison, the Convention sets forth a schedule by reference to the concurrence of only two factors and establishes a presumption of occupational diseases when listed diseases and toxic substances affect workers engaged in the corresponding trades, industries or processes. ***The Committee therefore requests the Government to review the current list of occupational diseases in accordance with the Convention's aim of relieving workers in the trades and industries listed from the burden of proving that they actually have been exposed to the risk of the disease in question. The Government should also change from restrictive to indicative the enumeration of the pathological symptoms resulting from exposure to the corresponding substances given in the left hand column of the list of occupational diseases in Decree 658/96.***

***In addition to the above conceptual changes to the recognition of occupational diseases, the Committee once again urges the Government to take concrete measures to improve the current list on the following points:***

- ***include the addition of the loading, unloading or transport of merchandise in general to the activities likely to cause anthrax;***
- ***decrease the requirement of exposure of at least ten years in regard to primary epitheliomatous cancer of the skin in accordance with the World Health Organization's (WHO) findings which showed that skin cancers can appear already after five years of exposure; and***



- **make an express reference to silicosis with or without pulmonary tuberculosis, if necessary with a reservation that the silicosis must be a determining factor in the incapacity or death, as provided in the Convention.**

The Committee notes the Government's indication that the abovementioned issues will be taken into consideration in the context of the modifications and amendments to Act No. 24.557 currently being prepared for submission to Parliament. The Committee notes however that Act No. 26.773, adopted in October 2012, does not address the abovementioned issues. **In this context, the Committee asks the Government to indicate in its next report the measures which will allow the national legislation to be brought in conformity with the obligations under the Convention. The Committee hopes that the Government will be able to indicate substantial progress made on these issues.**

The Committee further notes that the CTA refers in its comments to various decisions of the Supreme Court of Justice which have declared unconstitutional certain provisions of Act No. 24.557 regarding the procedures of recognition and compensation of occupational diseases. **The Committee asks the Government to supply copies of these decisions and to explain their impact on the application of the corresponding provisions of the Convention in law and in practice.**

## Bangladesh

### **Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1972)**

*Part V of the report form. Application of the Convention in national law and practice.* According to the information supplied by the Government in its reports under Conventions Nos 18, 19 and 118, the country faces major challenges in securing the constitutional right to social security as the coverage and support of social security schemes encounter difficulties in bringing the beneficiaries above the poverty line due to resource constraints. The Office of the Chief Inspector of Factories and Establishments (DIFE), responsible for enforcing the legal provisions relating to inspection of working conditions and filing judicial complaints against employers, is under-staffed and so far has not been notified of any cases of occupational disease. Steps are, however, currently being taken with a view to framing the rules implementing section 82 of the Labour Act of 2006, which establishes the forms and time limits for the notification of occupational diseases by the employers. While also emphasizing the lack of human resources within the DIFE, the Bangladesh Employers' Federation (BEF) calls on the Government to strengthen the DIFE and considers that it could benefit from technical assistance in the formulation of technical rules concerning notification of occupational diseases.

**Taking note of the above, the Committee expresses the hope that the Government will be able to soon finalize and adopt the regulations establishing the procedure for the prompt and effective notification of occupational diseases under section 82 of the Labour Act of 2006. It also hopes that measures will be taken with a view to strengthening the operational capacities of the DIFE. In this context, the Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.**

## Barbados

### **Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1972)**

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

*Article 65, paragraph 10. Adjustment of survivors' benefits.* In reply to the Committee's previous comments, the Government states in its report that it has introduced in 2005 a new method of annual indexation of benefits and insurable earnings, the upper limit of the latter being increased in line with national average wage increases. Benefits are increased by the same percentage as the lesser of the three-year average of wage or price increases, subject to actuarial advice on the maximum which may be granted so as to maintain the target reserve ratio of five times, through to the year 2030. The 12th actuarial review of the national insurance scheme indicates in this respect that in 2005, year of introduction of indexation, pensions were increased by 4.76 per cent, while the insured earnings ceiling was increased by 2.9 per cent. The Committee invites the Government to supply with its next report the information requested by the report form under Title VI of *Article 65*.

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

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (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:

*Article 5 of the Convention. Payment of benefits abroad.* With reference to its 2008 observation, the Committee notes that, in its report of 2009, the Government provided information on the pensions in payment under the reciprocal agreements concluded with Canada, Quebec, the United Kingdom and the member countries of CARICOM. The Committee notes, however, that the Government's report did not reply on the other issues raised in the observation, particularly as regards the Government's indication in 2005 of the planned adoption of a draft bill amending the national legislation so as to comply with *Article 5* of the Convention. **The Committee therefore requests the Government to provide in its next report due in 2012 all the information requested in the Committee's previous observation on the following points.**

The Committee recalls that section 49 (in conjunction with section 48) of the National Insurance and Social Security (Benefits) Regulations of 1967 and section 25 of the Employment Injury (Benefits) Regulations of 1970 deprive a beneficiary residing abroad of the right to ask for the benefit to be paid directly to him at his place of residence, which is contrary to the provisions of *Article 5* of the Convention. In its previous report of 2002, the Government stated that approval has been given for direct payment of the benefits in the country where the claimant is currently residing, that corresponding amendments of the National Insurance and Social Security Act were approved by the Government to bring it in accordance with *Article 5* of the Convention, and that the procedural steps were taken to submit these amendments to Parliament for enactment. In its report, received in June 2005, the Government indicated that a draft bill had been prepared for benefits to be paid to persons residing abroad and that a copy of the new provisions would be forwarded to the ILO as soon as they were adopted by Parliament.

The Committee recalls that, in granting equality of treatment for residents of the contracting parties under their social security legislation, the CARICOM Agreement on Social Security ensures protection and maintenance of the rights of beneficiaries “notwithstanding changes of residence among their respective territories – principles which underlie several of the Conventions of the International Labour Organization” (Preamble). The Committee wishes to recall in this respect that, in accordance with the principle of the maintenance of rights through the provision of benefits abroad, as established by Convention No. 118, Barbados shall guarantee direct payment of the benefits to all entitled beneficiaries at their place of residence, irrespective of the country in which they reside and even in the absence of a bilateral or multilateral agreement to that effect. ***The Committee trusts that the Government will make every effort to ensure that the bill is adopted in the very near future so as to ensure direct payment at their place of residence abroad of old-age, survivors’ and employment injury benefits, both to its own nationals and to nationals of any other Member that has accepted the obligations of the Convention in respect of these branches. The Committee hopes that the Government’s next report will contain a copy of the new provisions together with detailed statistics on the transfer of benefits abroad to beneficiaries, including Barbadian nationals, who are not covered by the CARICOM Agreement or bilateral agreements with Canada and the United Kingdom.***

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

### **Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128) (ratification: 1972)**

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

*Article 29. Adjustment of invalidity and old-age benefits.* In its previous reports, the Government had indicated that pensions were reviewed on an ad hoc basis, but that it was considering introducing a method of annual indexation as a means to increase periodical payments. The Committee invites the Government to supply with its next report the information requested by the report form under *Article 29*.

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

## **Plurinational State of Bolivia**

### **Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128) (ratification: 1977)**

With reference to its previous observation concerning the application of the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), Convention No. 128, and the Medical Care and Sickness Benefits Convention, 1969 (No. 130), the Committee notes that it has only received the report for Convention No. 128. ***The Committee trusts that the Government will not fail to provide the remaining reports in 2013, along with its reply to the present observation. The provision of those reports will enable the Committee to have an overview of the development of the Bolivian Social Security System.***

*Restructuring of the pension system.* The Committee notes with ***interest*** the creation by Act No. 065 of 2010 of the solidarity pension intended, in the context of the new semi-contributory scheme, to increase the level of the pensions of workers with low incomes through a solidarity fund financed in part by the employers’ solidarity contribution and by contributions from insured persons with higher incomes. It also notes with ***interest*** the consolidation of the dignity allowance which guarantees to all nationals of Bolivia over 60 years of age who are resident in the country a minimum non-contributory income. The Committee observes that these measures strengthen the application of the principle of solidarity, defined as one of the essential principles of long-term social security in section 3 of Act No. 065. ***The Committee invites the Government to provide information in its next report on the functioning of the solidarity pension and the dignity allowance, with an indication in particular of the number of beneficiaries and the amount of the benefits provided.***

With regard to the contributory old-age pension scheme, financed through the contributions of insured persons to their individual accounts, the Committee notes that the Public Long-Term Social Security Administration will replace the pension fund administrators for the administration and management of the scheme. The Administration will be under the supervision of the Pensions and Insurance Social Inspection and Control Authority, which replaces the Pension Inspection and Control Authority. The Committee observes that, in contrast with the previous situation in which the Inspection Authority enjoyed autonomy, the new entity is under the supervision of the Ministry of the Economy and Public Finance, and that the Authority’s decisions can be challenged through hierarchical appeal procedures. ***The Committee invites the Government to indicate the objectives of these changes in the administration and inspection of the pension system.***

The Committee also observes that Act No. 065 changes the conditions for entitlement to the old-age pension, in particular allowing access to the old-age pension as from 58 years of age for persons who have paid contributions for a

minimum of ten years. *The Committee invites the Government to provide information in its next report on the financial situation of the contributory scheme, and on the replacement rate that it is hoped that pensions will attain once the minimum period of ten years of contribution has been completed.*

*Extension of the pension scheme.* In its previous observation, the Committee emphasized the low-level of coverage of the pension and health schemes, indicating that it appeared necessary to take measures to adapt the Bolivian social security model to the economic and social situation of the country, in which informal self-employment is predominant. The Committee understands that the various innovations introduced by Act No. 065 are intended to extend the level of coverage of pensions. While noting that for most self-employed workers coverage by the social security system remains voluntary, the Committee notes that coverage is compulsory for self-employed consultants and insured persons, in accordance with section 101 of the Act. It also understands that the creation of the solidarity pension could provide an incentive for low-income workers, both dependent and self-employed, to affiliate with the scheme. The Committee also notes with *interest* the strengthening by Act No. 065 of administrative sanctions in the event of delays in the payment of contributions and the establishment of penal sanctions for the misappropriation of contributions by employers. *So as to be able to assess the impact of the various measures referred to on the level of coverage of the pension scheme, the Committee requests the Government to provide information in its next report on the number of insured persons contributing to the overall pension system, with an indication of the number of self-employed workers, as well as data on the sanctions imposed for failure to pay contributions.*

*Noting that the Government's report does not contain replies to the questions in the report form requesting statistics on the coverage of invalidity, old-age and survivors' pensions, the Committee wishes to recall that the fact that the Government has availed itself of the temporary exceptions set out in Articles 9, 13, 16, 22 and 38 of the Convention does not relieve it of the obligation to provide information on the level of coverage of its pension system.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Burkina Faso

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1969)

*Article 2 of the Convention.* *Application of occupational accident legislation to temporary and casual workers.* The Committee notes with *satisfaction* Order No. 2008-008/MTSS/SG/DGPS, Chapter IV of which establishes particular provisions relating to the affiliation of casual and temporary workers and day labourers to the National Social Security Fund. The Committee notes the Government's statement that, under the terms of the abovementioned Order, the categories of workers referred to in it are entitled to all benefits relating to occupational accidents and occupational diseases in the same manner as permanent workers. *The Committee requests the Government to provide information in its next report on the number of casual and temporary workers and day labourers affiliated to the National Social Security Fund, and to continue to supply statistics relating to the application of the Convention in practice.*

### **Workmen's Compensation (Occupational Diseases) Convention, 1925** (No. 18) (ratification: 1960)

*List of occupational diseases.* The Committee notes the Government's statement concerning its participation in the ongoing process of reviewing and harmonizing the national list of occupational diseases in the area covered by the Inter-African Conference on Social Security (CIPRES). It also notes that, in order to be able to comply with these lists, Decree No. 355-1996 on occupational diseases recognized in Burkina Faso will be revised as soon as the CIPRES has adopted its conclusions on this matter. The Committee notes that many member States of CIPRES, including Burkina Faso, have ratified a number of ILO Conventions concerning occupational diseases, such as Convention No. 18, the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), and the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121). The Committee recalls that Members taking part in regional processes to integrate or harmonize their national laws remain bound by the obligations under the ILO Conventions they have ratified and must therefore ensure that the decisions adopted at regional level allow them to respect their international commitments. *In this respect, the Committee hopes that the Government will be able in the near future to inform the Committee of the revision of Decree No. 355-1996 that will include, as requested in its previous comments, a full reference to anthrax infection and all the poisonings caused by lead and mercury, their allies, amalgams and compounds. Finally, the Committee draws the Government's and Office's attention to the interest that might lie in developing cooperation between CIPRES and the International Labour Organization, especially to ensure that when harmonizing the schedules of occupational diseases, the content of the revised Schedule I of Convention No. 121 [Schedule I amended in 1980], and the List of Occupational Diseases Recommendation, 2002 (No. 194), is taken into account.*

*Practical application of the Convention.* *The Committee requests the Government to provide in its next report statistical information on the number of occupational diseases recorded and on the corresponding amount of compensation paid.*

## Cape Verde

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1987)

*Branch (g) (Employment injury benefit). Articles 3 and 4 (equality of treatment without conditions of residence) and Article 5 (payment of benefits abroad) of the Convention.* In reply to the issues raised previously under the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), and Convention No. 118, the Government, in its report received in August 2012, reiterates that a reform of the national legislation in respect of industrial accidents and occupational diseases is to be undertaken in consultation with the social partners. In the meantime, the Decree Law No. 84/78, as subsequently modified, which governs industrial accidents and occupational diseases, remains applicable. While recognizing that the latter is not fully in conformity with international obligations assumed by Cape Verde, the Government once again stresses that the newly adopted Labour Code does establish, as a fundamental principle of labour law, the right of all workers without distinction to compensation in case of accidents at work. As the Committee pointed out in its previous observation, the reciprocity condition for equality of treatment of foreign nationals and their dependants with Cape Verde nationals contained in section 3(3) of the Decree Law runs counter to this principle. The Committee hopes that the provision subjecting equality of treatment to a reciprocity condition will soon be repealed, and that the future reform of the legislation concerning employment injury compensation will permit the Government to introduce specific provisions guaranteeing the payment of pensions in case of residence abroad as well as equality of treatment for refugees and stateless persons. **Noting that the situation in respect of issues raised previously remains unchanged, the Committee cannot but express the hope that the necessary amendments to the legislation on employment injuries will be made shortly.**

*Part V of the report form. Compliance with national legislation in sectors employing high rates of foreign workers.* The Committee notes the Government's reply to the comments made in 2010 by the Cape Verde Confederation of Free Trade Unions (CCSL) concerning in particular coordination mechanisms existing under the national immigration strategy aimed at providing institutions with guidance and tools for implementing immigration management policy. **The Committee would like the Government to indicate the results achieved in ensuring better compliance with the obligation of employers under the new Labour Code to insure all workers against industrial accidents, with a particular emphasis on sectors employing a high number of foreign workers.**

The Committee notes the Government's reply to its previous request for statistical information on occupational accidents under Convention No. 19. The Government's data refers to 202 accidents at work officially recorded in 2011, with the highest proportion in the construction sector (33.17 per cent). **Because this data does not include any breakdown for foreign workers employed in the country, the Committee again requests that the Government indicate as far as possible the number and nationality of foreign workers employed in the country and the number of those involved in accidents, particularly in the construction sector.**

## Central African Republic

### **Workmen's Compensation (Occupational Diseases) Convention, 1925** (No. 18) (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:

*Articles 1 and 2 of the Convention. Absence in the country of legislation covering occupational diseases.* The Committee notes the Government's indication in its last report, in the same way as in previous reports, that the occupational disease branch is not covered by the Central African Social Security Office. It also indicated previously that it did not have precise information on the manner in which occupational diseases are compensated, as their coverage is established through collective agreements, since the legislation on these matters is not applicable.

While taking due note of this information, the Committee is bound once again to express concern at the continued failure to give effect to the provisions of the Convention. The Committee recalls that by ratifying the Convention the Government undertook, firstly, to ensure that compensation shall be payable to workers incapacitated by occupational diseases or to their dependants in accordance with the general principles of the national legislation relating to compensation for industrial accidents, in accordance with *Article 1* of the Convention and, secondly, to consider as occupational diseases those diseases and poisonings produced by the substances set forth in the Schedule appended to the Convention, in accordance with *Article 2*. **Under these conditions, the Committee trusts that the Government will take all the necessary measures without further ado to ensure the compensation guaranteed by the Convention to workers affected by occupational diseases recognized by the Convention or their dependants.**

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

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (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 supplied by the Government which were received in September 2006 and May 2007, according to which, in general terms, Convention No. 118 is barely being applied owing to budgetary problems and no national legislation is ready to be enacted in this area. The Government indicates that equality of treatment with regard to the granting of benefits is subject, contrary to *Article 4, paragraph 1, of the Convention*, to the condition of residence of foreign nationals on the national territory. With regard to the payment of benefits abroad provided for by *Article 5, paragraph 1, of the Convention*, the Government indicates that no indemnity or benefit is paid when the beneficiary resides abroad, except in the case of persons appointed to an embassy or a representation of an undertaking whose headquarters are located in the Central African Republic. The granting of family allowances is made on condition that the children reside on the national territory, which is contrary to *Article 6 of the Convention*. Finally, no multilateral or bilateral social security agreement has been concluded with the member States to comply with the requirements of *Articles 7 and 8 of the Convention*, since the Central African Republic does not participate in any system of rights preservation. However, the Government points out that it has undertaken a far-reaching reform of national social legislation, including social security legislation, which takes account in particular of the Committee's observations concerning the application of Conventions Nos 18, 117 and 118.

*The Committee notes with regret that, since the ratification of the Convention in 1964, the Government has not managed to take the necessary measures to give effect to the principal provisions of the Convention, notwithstanding the persistent observations of the ILO supervisory bodies. It trusts, however, that in the context of the reform of the social sector announced in the report, the Government will be able to make specific amendments to the national legislation in order to bring it into full conformity with the Convention, requesting technical assistance from the ILO if necessary. The Committee once again indicates in detail the amendments in question in a direct request to the Government. Finally, it would be grateful if the Government would send it a copy of the new Social Security Code, enacted by Act No. 06035 of 28 December 2006, and to indicate how this takes account, in particular, of the Committee's observations concerning the application of the Convention.*

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

## Chile

### **Sickness Insurance (Industry) Convention, 1927 (No. 24)** (ratification: 1931)

### **Sickness Insurance (Agriculture) Convention, 1927 (No. 25)** (ratification: 1931)

*Article 7(1) of the Convention. Continuous failure to apply core provision of the Convention.* For many years, the Committee has been drawing the Government's attention to the fact that the national legislation is not in compliance with a basic principle established by Convention No. 24, that workers and employers shall share in providing the financial resources of the sickness insurance scheme. In Chile, all social contributions, with the exception of those for the employment injury compensation scheme, have been payable by workers since the adoption of Legislative Decree No. 3501 of 1980.

While it acknowledges the extensive information supplied by the Government in its latest report regarding the financing and operation of the employment injury scheme financed exclusively by the employers, the Committee is bound to observe that employment injury issues are not addressed by the present Convention and are dealt with under the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), also ratified by Chile. The Committee *regrets* that the report does not express any intention of seeking ways to finance the sickness insurance system through joint contributions of employers and insured persons so as to give effect, in national laws and regulations, to the requirements of *Article 7(1)*. The Committee wishes to emphasize that failure to comply with the principle of the collective financing of social security in the health insurance branch, as in the pensions branch, makes the system socially unjust for workers and therefore incompatible with the objectives of international labour standards in relation to social security. *The Committee asks the Government to reconsider the situation in consultation with the social partners and to indicate in its next report how it intends to give effect to its obligations under Article 7(1) of the Convention.*

### **Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)** (ratification: 1935)

### **Follow-up to the recommendations of the Tripartite Committees. Representations made in 1986 and 2000 under article 24 of the ILO Constitution 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 this Convention and the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), following the reform of the pension system in 1980, has been recognized for many years. This issue has given rise to two representation procedures under article 24 of the ILO Constitution in 1986 and 2000. In both cases, the Governing Body concluded that the Conventions in question were not complied with and called upon the Government to amend the national legislation to ensure that the privately managed pension scheme established by Legislative Decree No. 3.500 of 1980 be 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.

In its latest report, the Government does not refer to any amendments made to the private pension scheme which are likely to give effect to the abovementioned recommendations. For the most part, the Government provides information on the repercussions of Act No. 20.255 of 2008 on the Chilean social insurance scheme. The Committee notes that the reform of 2008, apart from the fact that it established a minimum pension scheme subject to a means test funded by the state budget, did not change the basic characteristics of the private pension scheme, in so far as, inter alia, the latter does not guarantee a defined benefit throughout the contingency and excludes the representatives of insured persons from participating in the administration of the pension fund. The social pensions based on the principle of solidarity established under Act No. 20.255 are non-contributory old-age and invalidity benefits paid to persons who are not entitled to a pension under other old-age insurance schemes, and who belong to the 60 per cent of the poorest households in the country. In this respect, these benefits cannot be considered as old-age and invalidity benefits in the context of Conventions Nos 35, 36, 37 and 38, as these Conventions provide for defined contributory benefits paid by old-age or invalidity insurance schemes. ***The Committee draws the Government's attention to the possibility of carrying out an evaluation – by having recourse if necessary to ILO technical assistance – of the conformity of the solidarity-based pillar created under Act No. 20.255 with the requirements of Part V (Old-age benefit) and IX (Invalidity benefit) of the Social Security (Minimum Standards) Convention, 1952 (No. 102), which make it possible to give effect to these provisions by providing benefits to all residents whose means during the contingency do not exceed prescribed limits.***

*Communication submitted by the National Association of Public Employees (ANEF), the Association of Employees of the Women's National Service, the College of Teachers of Chile AG, the National Confederation of Business and Services, and the Confederation of Unions in the Banking and Financial Sectors of Chile.* The Committee notes the information sent by ANEF, the Association of Employees of the Women's National Service, the College of Teachers of Chile AG, the National Confederation of Business and Services and the Confederation of Unions in the Banking and Financial Sectors of Chile, which was received at the Office on 15 September 2011. According to these organizations, the private pension scheme based on a funded pension plan results in discrimination against women in so far as it is based on sex-distinct mortality tables. This means that a man and woman with exactly the same amount in their capital accumulation accounts when they retire will receive different pensions entirely on account of their gender. In its reply, the Government states that the use of sex-distinct mortality tables to calculate men's and women's pensions is justified because women have a higher life expectancy. Using unisex tables would undoubtedly increase the pension level of women, but it would result in the available capital in women's capital accumulation accounts being depleted more quickly. The Presidential Advisory Council for the pension scheme reform carried out studies on the introduction of unisex mortality tables and rejected this possibility for a number of reasons, among which: the risk that the insurance companies' reserves might be inadequate; a reform of this nature would imply cross-subsidization between men and women: the lack of a comparative basis at international level, since no other country with a funded pension scheme has introduced unisex tables.

The Committee notes that the disparity between the pensions paid to men and women under the private pension scheme is a direct consequence of the nature of the system based on the capital accumulation retirement accounts of the beneficiaries. The Committee notes in this respect that, more than 30 years ago, the Supreme Court of the United States already considered that the Civil Rights Act of 1964 banned a contribution differential on the basis of sex in the context of a pension plan (*City of Los Angeles v. Manhart*, 435 U.S. 702, 98 S. Ct. 1370 (1978)). The Committee also notes that in 2011 the European Court of Justice ruled that different insurance premiums for women and men constituted sex discrimination and was not compatible with the Charter of Fundamental Rights (*Test-Achats Case* (C-236/09)). The Committee is also of the understanding that, in a resolution adopted in 2010, the Constitutional Court of Chile ruled that a gender criterion in risk factor tables used in the private insurance health scheme was unconstitutional (section 38 of Act No. 18.933 (Isapres)). ***In view of the preceding considerations, the Committee invites the Government to avail itself of the technical assistance of the Office so that it might study in greater detail the implications of using unisex mortality tables on women's pensions and the ways to offset the negative effects caused by this practice.***

*Communication submitted by the National Confederation of Municipal Employees of Chile (ASEMUCH).* In a communication received on 30 May 2011, ASEMUCH considered that the remuneration taken into account to compute the pensions of municipal employees within the meaning of Legislative Decree No. 3.501 had unjustly been restricted to their basic wage, excluding a number of other components of their remuneration in the calculations, and had therefore violated Conventions Nos 35 and 37. According to ASEMUCH, taking into account only the basic wage for calculating the pension results from a misinterpretation of the term "in the portion subject to taxation" contained in section 2 of legislative Decree No. 3.501, which is taken to be synonymous with the term "remunerations subject to taxation". This interpretation is not consistent with section 5 of the abovementioned Decree, under which social insurance contributions are not paid on the total remuneration, considering that the portion that exceeds 50 times the monthly living wage is exonerated from contributions. ASEMUCH maintains that this restrictive interpretation of remuneration considered for pension purposes has resulted in reducing the level of contributions, the amount of funds constituted for pension purposes and, consequently, has also reduced the level of old-age and invalidity pensions paid to retirees. In its report received by the Office on 21 September 2012, the Government states that the reply to comments from ASEMUCH is still being prepared by the Court of Accounts (*Contraloría General de la República*), in cooperation with the Under-Secretariat of Social Welfare and the authority responsible for monitoring pensions (*Superintendencia de Pensiones*), and will be sent as soon as it is available.

The Committee notes that the comments from ASEMUCH concern the damages incurred by the social security system, as a result of the failure to take into account certain components of municipal workers' pay apart from the basic wage when calculating old-age and invalidity contributions. It notes, in the light of the information submitted by ASEMUCH, that these components of municipal workers' remuneration which are not subject to old-age and invalidity contributions are taxed in some cases and not in others. Without pre-empting the information that the Government might send in its forthcoming reply, the Committee recalls that, in the context of recent procedures under article 24 of the Constitution (see GB.298/15/6), of which it assumes the follow-up, the ILO Governing Body adopted the conclusions of the Tripartite Committee set up to examine the representation, concluding that the Government was directly responsible for the financial and moral prejudice suffered by the categories of workers concerned. In this particular case, the fact that these components of remuneration were indeed due to the municipal workers is not questioned; they seem moreover to have been collected by the municipal employees, but they were not included in the contribution base as regards old-age and invalidity insurance. On this matter, the Committee would like to recall that under *Article 7(3) of the Convention*, when contributions are graded according to remuneration, the remuneration taken into account for this purpose shall also be taken into account for the purpose of computing the pension. Furthermore, according to *Article 10(5) of the Convention*, the public authorities are responsible for the administrative and financial supervision to ensure the proper running of the old-age and invalidity insurance scheme. This responsibility also includes that of ensuring that all the rights and obligations of the parties are respected and that all contributions due which have been or should have been collected, have indeed been collected effectively. *The Committee therefore requests the Government to provide detailed explanations on the matter and to indicate whether it has fulfilled the obligation incumbent upon it to guarantee the effective payment of all old-age and invalidity contributions due.*

***Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)***  
(ratification: 1935)

*The Committee invites the Government to refer to the comments made under the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35).*

## Colombia

***Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)***  
(ratification: 1933)

***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)***  
(ratification: 1933)

***Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)*** (ratification: 1933)

The Committee notes the Government's report of 30 August 2012 and the various comments supplied by the Single Confederation of Workers of Colombia (CUT), the National Business Association of Colombia (ANDI), and the General Confederation of Labour (CGT), respectively of 31 August, 3 September and 5 September 2012.

*Article 2(1) of Convention No. 17. Coverage.* The Committee notes with *interest* that following the adoption of Law No. 1562 of 11 July 2012 amending the Vocational Risk System and other provisions concerning occupational health, the personal scope of the Occupational Risks System (SGRL) was extended. The new law incorporates the previous system of vocational risks into the new SGRL and extends compulsory affiliation to several groups of employees, including independent contractors with more than one month contract, the worker-members of cooperatives and pre-cooperatives and self-employed workers in high-risk activities. Moreover, the law provides for voluntary membership of informal workers. According to the Government's report, in March 2012, 8,126,344 dependent workers and 243,165 self-employed workers were affiliated to the SGRL, compared with 6,633,833 and 73,800, respectively, in December 2009. Forty-one per cent of the active population would therefore currently be covered by the SGRL. For its part, the CUT stresses that with only 8.72 per cent of the workers covered by the SGRL, the level enrolment in agriculture is still extremely low. *In order to be able to evaluate the impact of the new legislation regarding insurance coverage against occupational risks, the Committee invites the Government to continue providing statistics on the number of SGRL affiliates, including information specifically on the construction and agricultural sectors. Additionally, the Committee requests the Government to indicate in its next report how Law No. 1562 and its implementing regulations define informal workers and the rights of casual and daily workers to benefits under the SGRL.*

*Penalties for non-compliance with SGRL regulations.* The Committee notes with *interest* the strengthened sanctions established by Law No. 1562 in the event of default of the employer to observe its obligations in respect of occupational risks, including in case of non-payment of contributions or of absence of reporting of occupational accidents and illnesses.

*Payment of benefits by employers to non-affiliated workers.* In accordance with Law No. 1562, in the event of a work accident affecting a worker not affiliated to the SGRL by his or her employer, the latter will be directly responsible for the benefits provided by law. While the Government does not provide information on how this liability is applied in

practice, the Committee understands from the comments made by the CGT and the CUT that the victims need to go to court. The Committee has always considered that the failure of employers to fulfil their obligation to affiliate workers, legal action by victims of accidents should not constitute the standard mean of appeal, the State being responsible for taking all necessary measures to ensure and facilitate the provision of employment injury benefits, leaving the possibility to hold the employer liable for reimbursing the expenses incurred by the State. ***With a view to being able to fully assess the practicalities of this issue, the Committee requests the Government to indicate whether there exist interlocutory proceedings, either judicial or in the framework of labour inspection services, for victims of accidents or occupational diseases not affiliated by their employer to SGRL. Please also indicate the average length of the proceeding for obtaining payment of compensation in these circumstances.***

*Payment of benefits in the event of disputes about the commonality or occupational accident or disease.* The CGT and CUT draw attention to the high number of cases where long delays would occur in health care or the payment of benefits due to disputes between health care providers and occupational risk insurers (ARL) on the origin of the accident or illness. The Government states that the Law No. 1562 guarantees the payment of cash benefits to workers even in cases where the source of injury or illness is in dispute. Under section 5(3) of the Law, when the cause of the accident or disease is questioned, the ARL pays the worker “the percentage provided by the contributory social security health system”. The Committee observes that this percentage is lower than that corresponding to occupational accident or illness. ***The Committee requests the Government to report on the practical effects of the adoption of the new law on the frequency and length of proceedings concerning disputes on the occupational or general nature of accidents or diseases.***

*Article 5 of Convention No. 17. Compensation in the form of lump sum.* Law No. 1562 does not modify the rules applicable to workers who suffer a permanent loss of working capacity between 5 and 50 per cent: payment of compensation in the form of lump sum and maintenance of their employment relationship for the remaining working capacity. ***The Committee invites the Government to explain in further detail how employment protection is guaranteed by law.*** As for cases of permanent disability between 25 and 50 per cent where the risk of a loss of income is increased, the Commission considers it necessary, even if the employment relationship is preserved, to establish additional protection in the form of monitoring by the competent authority of the proper use of lump sum compensation, as provided in *Article 5 of Convention*. ***In this regard, the Committee again expresses the hope that the Government will introduce appropriate procedures to strengthen the protection of victims of occupational accidents and diseases against the misuse of lump sum compensations.***

*Article 11 of Convention No. 17. Protection against insolvency.* The Government indicates in its report that the Guarantee Fund for Financial Institutions (FOGAFIN), would be responsible both for social assistance benefits and cash benefits in the event of insolvency of an ARL while the CUT stresses in its comments that, in accordance with section 83 of Decree Law No. 1295 of 1994, the Fund only guarantees the payment of pensions provided by the ARL. ***The Committee requests the Government to indicate in its next report the normative texts extending the FOGAFIN guaranty to social assistance benefits provided under the SGRL scheme.***

The Committee notes that the practical information requested in respect of cases of insolvency of employers responsible for compensating workers who were not affiliated to the SGRL has not been supplied. The Committee understands that the cautionary measures contained in the Labour and Social Security Procedural Code are only aimed at preventing the risk of insolvency of the employer. ***Recalling that victims of industrial accidents should in any case not bear the consequences of the insolvency of the employer, the Committee requests the Government to explain in its next report how the State guarantees access to benefits to the worker who, while not affiliated to SGRL, fell victim of an industrial accident.***

*[The Government is asked to reply in detail to the present comments in 2015.]*

## Comoros

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (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 of the Convention. Scope of application.* In its previous comments, the Committee noted the observations sent by the Union of Autonomous Trade Unions of Workers of Comoros (USATC) which referred to the inefficiency of the National Social Insurance Fund and the inexistence of a service for registering workers with it, which, in practice, results in many wage earners not being declared and therefore not being covered by the Fund. In this regard, the Government stated that this situation was due essentially to problems of communication between Anjouan, the headquarters of the Fund, and Moroni, the capital of Comoros. Consequently, the Committee asked the Government to take, in the near future, all the necessary measures to improve the functioning of the Fund.

In its latest report, the Government states that an awareness-raising policy has been implemented to persuade the management of public or private enterprises, undertakings or establishments to register with the National Social Insurance Fund, so that the benefits provided for by national legislation in the event of occupational accidents are paid to all workers employed in such entities. With regard to workers who are not registered with the Fund, the Government states that some abuses have been noted in respect of the application of the Convention and that, consequently, it intends to extend National Social Insurance Fund



registration to all workers. *The Committee notes this information with interest and asks the Government to continue providing information on the progress made in progressively extending the application of the national legislation to all workers, employees and apprentices employed in public or private enterprises, undertakings or establishments, in accordance with this provision of the Convention. In the meantime, the Committee asks the Government to indicate the manner in which it is ensured, in practice, that the Convention applies to workers who are not declared with the National Social Security Fund and to specify, in particular, how national legislation and practice guarantee these workers compensation and the payment of medical expenses by their employers. Moreover, the Government is requested to indicate in its next report the penalties incurred and those effectively imposed in the event of failure to comply with the obligation to ensure that workers are covered by occupational accident insurance. The Government is also asked to indicate whether there is any particular aspect that the labour inspection bodies are required to monitor when carrying out inspection visits and to provide copies of extracts of any relevant inspection reports in this respect. The Government is also asked to provide copies of the Act relating to the National Social Insurance Fund, the Decree relating to its statutes and the Order establishing the organization, working rules and system for the financing of the National Social Insurance Fund.*

*Part V of the report form. Statistical information on the application of the Convention.* In its previous comments, the Committee asked the Government to provide information, in particular statistics, on the application of the Convention in practice. In this regard, the Government indicates that the labour administration services do not have a statistics department capable of providing reliable statistical data and that no notable progress has been recorded in respect of the reorganization and strengthening of the national system of statistics and information on the labour market. The Committee notes that the Government requests the technical assistance of the Office and hopes that the Office will soon be in a position to provide this technical assistance.

*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: 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 that ever since Comoros ratified the Convention in 1978, it has had to draw the Government's attention to the need to amend the content of section 29 of Decree No. 57-245 of 24 February 1957 on the compensation and prevention of occupational accidents and diseases. Pursuant to this provision, foreign victims of occupational accidents who have moved abroad receive as compensation only a lump sum equal to three times the amount of the periodical payment granted to them, whereas nationals continue to receive their periodical payments. Foreign dependants no longer residing in Comoros only receive a lump sum not exceeding the value of the periodical payment established by order. Finally, the dependants of a foreign worker employed in Comoros are not entitled to any periodical payments if they did not reside in the country at the time of the worker's accident.

In its latest report, as in those sent since 1997, the Government states that in practice, no distinction is made between national and foreign workers in respect of their treatment in terms of occupational accident compensation. It states that foreign workers continue to receive their cash benefits abroad provided that they give their new address. The Government's report does not however indicate the progress made in respect of the draft text which, according to the information sent by the Government in its previous reports, should repeal the provisions of Decree No. 57-245 which are inconsistent with the Convention.

*Consequently, the Committee trusts that the Government will take adequate measures, without delay, to bring the national legislation fully into line with the Convention, which provides that foreign nationals of States which have ratified the Convention, and their dependants, shall receive the same treatment as that guaranteed to nationals in respect of compensation for occupational accidents.*

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

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (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 of the Convention. National schedule of occupational diseases.* For many years, the Committee has been drawing the Government's attention to the need to amend Order No. 59-73 of 25 April 1959 as the schedules annexed to it do not cover all the occupational diseases listed in Article 2 of the Convention. In this respect, the Government indicates in its last report that Order No. 59-73 referred to above has become obsolete and that the schedule of occupational diseases applicable in Comoros is that appended to Article 2 of the Convention. This schedule is communicated to enterprise doctors and to employers' and workers' organizations. *While taking due note of this information, the Committee considers that it would be more appropriate, particularly with a view to achieving greater clarity and legal security, for the Government to formally repeal the above Order and replace it with a new legislative text recognizing the occupational origin of the diseases in the Schedule attached to Article 2 of the Convention. That would also provide an opportunity to adopt all the technical measures in this respect, thereby guaranteeing the proper operation of the system for the recognition of occupational diseases, for example, by establishing the conditions for the recognition of occupational diseases by physicians who are duly trained in this respect or by establishing minimum periods of exposure to the toxic substances and agents contained in the schedule.*

*Operation of the system for the recognition of occupational diseases.* With reference to the comments made previously by the Union of Autonomous Trade Unions of Workers of Comoros (USATC) reporting the absence of a technical structure for the recognition of occupational diseases and of a national supervisory mechanism, the Committee notes the Government's indication that it is aware of the need to establish an occupational health service in this respect. Among the initiatives taken in this regard, the Government refers to a survey on occupational health undertaken by the General Directorate of Labour at the enterprise level. It also indicates that a study on the basis for a national occupational safety and health policy is currently being prepared. The Committee takes due note of this information and observes that the Government would like to benefit from the technical assistance of the Office with a view to the establishment of a national statistical service. The Committee hopes that the

ILO will be in a position to provide the assistance requested in the very near future and that this will also be an occasion to assist the national authorities to improve the operation of the National Social Insurance Fund in general.

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

## Costa Rica

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1972)

*Part VI (Employment injury benefit). Articles 34, 36 and 38 of the Convention (read in conjunction with Article 69).* The Committee **regrets** to note once again that, despite the primacy recognized by the Constitution of Costa Rica to ratified international Conventions and the incorporation of Convention No. 102 into the block of constitutionality, there has been no change with respect to the provisions of the Labour Code limiting the period during which pensions are paid in the event of permanent disability of less than 67 per cent or in case of death of the breadwinner as a result of a work accident. The Committee observes that these limitations are not in line with *Articles 36 and 38* of the Convention which in principle provide for exceptions to the payment of periodical payments throughout the contingency in the case of partial disability where the degree of incapacity is slight. The Committee has continuously held that a permanent disability entailing a loss of earning capacity greater than 25 per cent cannot be considered slight. **In these circumstances, the Committee once again requests the Government to, without delay, take the necessary steps to eliminate the contradictions between the Labour Code and Part VI of the Convention.** Moreover, the Committee notes that the other elements of information in relation to Part VI of the Convention requested in the report form have not been received. The Government states in this respect that it was not able to ensure that the National Insurance Institute provide the relevant information. **The Committee trusts that the Government will take all necessary measures to ensure that the requested information is supplied in its next report.**

*Part VII (Family benefit). Articles 40–44.* The Committee notes the information provided by the Government concerning the non-contributory pension scheme. While the benefits provided by the scheme are fully relevant to compliance with Parts V (Old-age benefit), IX (Invalidity benefit) and X (Survivors' benefit) of the Convention, they do not seem to correspond to the contingency covered by Part VII, i.e. the responsibility for the maintenance of dependent children. The Committee recalls that, under *Article 41* of the Convention, family benefit should be either: a periodic payment; the provision to or in respect of children, of food, clothing, housing, holidays or domestic help; or a combination of both types of benefits. In accordance with *Article 41(c)*, these benefits may be granted on condition of resources. In this context, the Commission considers that the conditional cash transfer programme *Avancemos*, described by the Government in its report and directed to promote school integration of children from families with economic difficulties, meets the objectives of Part VII of the Convention. The Committee understands that other social assistance programmes mentioned by the Government such as *Bienestar familiar*, correspond to the goals of family benefit to the extent that some of its services are responsive to the needs of children. **In order to comprehensively assess the implementation of Part VII of the Convention in Costa Rica, the Committee invites the Government to specify in its next report the amounts of these social assistance programmes directly targeted to the needs of children.**

*Article 72. Principle of democratic administration of the social security system.* Under paragraph 1 of *Article 72* of the Convention, when the administration of the social security scheme is not entrusted to an institution regulated by public authorities or by a government department responsible to Parliament, representatives of the persons protected shall participate in administration or be associated therewith in a consultative capacity. **The Committee requests the Government to explain in its next report how it gives effect to this principle under the Supplementary Compulsory Pensions Scheme.**

*Issues raised by the Confederation of Workers Rerum Novarum (CTRN).* The Committee notes the comments of the CTRN received on 2 September 2012 and the Government's note of 5 November 2012 indicating that replies to the CTRN communication will be sent promptly. The CTRN comments refer specifically to the following issues: the deterioration that characterizes the health care provided by the Social Security Fund (CCSS), where an increasing number of insured need to litigate before the courts with a view to being granted certain treatments or medicines; the possibility of reducing the level of invalidity, old-age and survivors' pensions in the near future; the complexity of the administrative and judicial procedures to access disability pensions; the consequences of the opening to private companies of insurance against employment injuries on the quality of services provided by the National Insurance Institute and industrial accident prevention policies. **The Committee requests the Government to reply to the comments submitted by the CTRN in its next report.**

**[The Government is asked to reply in detail to the present comments in 2013.]**

## Democratic Republic of the Congo

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1987)

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 the Democratic Republic of the Congo has accepted the obligations under Convention No. 102 in relation to old-age benefit (*Part V*), family benefit (*Part VII*), invalidity benefit (*Part IX*), and survivors' benefit (*Part X*). The Democratic Republic of the Congo has also ratified the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Employment Injury Benefits Convention, 1964 (No. 121).

In 2004, following the comments that it has been making for many years concerning the need to bring the national legislation fully into conformity with the standards referred to above, the Government established a Committee on Social Security Reform with the mandate of preparing a draft revision of the Social Security Code (Ministerial Order No. 12/CAB.MIN/TPS/DC/FMK/066/04 of 8 December 2004). In 2005, by Decree No. 05/176 of 24 November, the Government also created the National Social Protection Support Programme (PNPS).

The Committee notes that, according to the information provided by the Government in its latest report, it has not been possible to finalize the reform of the social security system as the body responsible for approving the draft of the new Social Security Code, the National Labour Council, is experiencing financial difficulties in holding its 30th Session. It also notes that the Government has availed itself of ILO technical assistance for the preparation of the draft text of the new Social Security Code, and that this assistance covered, among other matters, the reinforcement of the institutional capacities of the National Social Security Institute and the extension of social protection to populations hitherto not covered.

*The Committee trusts that the Government will take all the necessary measures to finalize the reform of social security in the near future. It also hopes that the Government will provide detailed information in its next report due in 2012 on the manner in which the legislation gives effect to Convention No. 102, and on any difficulties encountered in practice in the application of the Convention. Please provide a copy of the new Social Security Code or the draft text approved by the National Labour Council, as appropriate.*

*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 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, notwithstanding the comments that it has been making for many years, the Government's latest report does not indicate any tangible progress achieved in bringing the national legislation into conformity with the Convention and does not provide the information requested previously on the following points:

- the need to add to the schedule of occupational diseases, diseases caused by the toxic halogen derivatives of the aliphatic series hydrocarbons and those caused by benzene or its toxic homologues (*Article 8 of the Convention*);
- the need to specify the manner of calculation and actual payment for the periodic benefits due in respect of temporary incapacity for work, including incapacity at its initial phase, and benefits in respect of the total or partial loss of earnings capacity, or the death of the breadwinner, in accordance with the report form for the Convention under *Articles 13, 14 and 18* (in relation with *Articles 19 and 20*);
- the need to indicate how the periodic benefits due in respect of total or substantial loss of earnings capacity and survivors' benefits are reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living (*Article 21*);
- the need to explain the manner in which appeal procedures operate in practice in the case of refusal of the benefit or complaint as to its quality or quantity (*Article 23*);
- the need to describe the manner in which the State assumes general responsibility for the proper administration of the institutions or services concerned in the application of the Convention (*Article 24, paragraph 2*).

*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 with *regret* 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.*

### **Sickness Insurance (Industry) Convention, 1927 (No. 24) (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 that the system of social protection in force in Djibouti is currently undergoing major restructuring involving the amalgamation of various existing insurance funds. The aim is to rationalize the management thereof, while extending the scope of sickness insurance with a view to the gradual affiliation of the whole population, including persons working in the informal sector. To this end, Act No. 212/AN/07/5e L establishing the National Social Security Fund (CNSS) provides that new complementary social instruments such as sickness insurance, funded supplementary pension plans and voluntary insurance will be instituted by means of regulations. The Committee also welcomes the recent formulation of the programme to promote decent work in Djibouti and the initiative to include a component on social protection. *The Committee encourages the Government to take all possible steps to complete the reforms under way and to keep it informed of the progress made with a view to establishing an operational sickness insurance system in the context of the principles guaranteed by the Convention. The Government is also invited to continue its efforts towards integrated management of the social security system providing protection for the greatest possible number of people, if necessary, with technical support from the Office.*

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

### **Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37) (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 that the social protection system in Djibouti is undergoing major restructuring involving the merger of various insurance funds, each of which has its own invalidity branch in the interest of efficient management. *The Committee requests the Government to keep it informed of progress in implementing the abovementioned reform and to indicate in its next report the manner in which national law and practice give effect to the provisions of the Convention.*

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

## **Ecuador**

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (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:

With reference to its previous observation, the Committee notes the indication contained in the Government's report of 2007 that the Constitutional Tribunal declared several provisions of the Social Security Act of 2001 unconstitutional. *In order to clarify the situation in law, the Committee reiterates its request to the Government to provide, in its next detailed report due in 2012, information on the extent to which the amended legislation gives effect to each of the provisions of the Convention, as well as the statistical information requested in the report form. Please supply also any regulations that have been adopted to apply the new Act.*

*Article 5 of the Convention (in conjunction with Article 10). Payment of benefits abroad.* The Government confirms in its report that the payment abroad of old-age, invalidity and survivors' benefits, and of workers' compensation in cases of accidents, occupational diseases or the death of the worker, is made in each individual case on the basis of a resolution issued by the Benefits Committee of the Ecuadorean Social Security Institute (IESS). Referring to the conclusion of the Multilateral Ibero-American Social Security Convention and the Andean Instrument of Social Security (Decision No. 583) establishing the principle of equality of treatment and exportability of benefits among the ratifying parties, the Government also indicates that where bilateral social security agreements have been concluded, special liaison offices have been created with respect to the transfer of benefits abroad. *The Committee once again requests the Government to legitimize the practice of authorizing the payment of benefits abroad by adopting a specific provision ensuring that Articles 5 and 10 are applied both in law and in practice, as it had previously expressed the intention of doing. The Committee asks the Government to send information on the progress made in this regard in its next detailed report due in 2012.* The Committee recalls in this respect that the scope of obligations assumed by Ecuador under Convention No. 118 goes beyond the circle of the countries party to the Andean Instrument of Social Security or the Multilateral Ibero-American Social Security Convention. By ratifying Convention No. 118, the Government has undertaken to guarantee, in accordance with its *Articles 5 and 10*, payment of the above benefits to the nationals of any other Member which has accepted the obligations of the Convention in respect of a given branch, as well as to its own nationals and to refugees and stateless persons, in the event of residence abroad, irrespective of the new country of residence or the conclusion of any reciprocity agreement.

*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: 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 8 of the Convention. Recognition of occupational diseases.* The Committee notes that the legal provisions on occupational diseases are to be found in the Labour Code of 2005 (sections 349, 363, 364, etc.), Chapter VII of Social Insurance Act No. 2001-55, particularly in section 158, and in resolution No. 741 (general regulations on occupational risk insurance). The Committee observes in this connection that section 363 of the Labour Code contains a schedule of occupational diseases and that section 364 allows for a Risk Assessment Committee to add other occupational diseases to those already listed. Resolution No. 741, section 4, lists the specific agents carrying a risk of occupational disease, and section 6 lists the occupational diseases they are liable to cause, with the requirement that the "presence and action" of the agent concerned must be demonstrated. Section 9 of the resolution allows for the Disability Evaluation Committee to add other occupational diseases on condition that this Committee first establishes a causal link between the work performed and the acute or chronic ailment. It should be noted that the Labour Code says nothing of the need for proof of a causal link, either in connection with the list of occupational diseases or in relation to the decisions of the Risk Assessment Committee. **Consequently, the Committee requests the Government to specify the coverage of the various provisions referred to above as regards the lists of occupational diseases, and to specify which of these lists it deems to be consistent with the provisions of the Convention. The Committee also asks the Government to provide copies of decisions by the Risk Assessment Committee and by the Incapacity Assessment Committee so that the burden of proof regime governing occupational diseases not included in the lists can be assessed. The Committee further requests the Government to take appropriate steps to amend section 5 of resolution No. 741, so as to establish a presumption of occupational origin in favour of workers suffering from a disease enumerated in Schedule I of the Convention when they are engaged in the types of work mentioned in the schedule.**

*Article 9. Coverage of chronic diseases.* The Committee notes that in its report the Government construes sections 10, 12, 14 and 19 of resolution No. 741 and section 177 of the IESS Codified Statute to mean that benefits under employment injury insurance are not subject to length of employment, duration of insurance membership or payment of contributions. The Committee observes, however, that in section 14 of the above resolution, under which occupational diseases are treated on a par with employment accidents, reference is made to acute, but not to chronic, occupational diseases. **Consequently, to avoid all ambiguity, the Committee asks the Government to confirm that its interpretation of the abovementioned provisions also applies to chronic diseases.**

*Articles 13, 14 and 18 (in conjunction with Articles 19 and 20). Amount of periodical payments.* The Committee notes the information in the Government's 2007 report to the effect that the calculation of cash benefits is based on *Article 19* of the Convention. **If this is so, the Committee invites the Government to explain in its next detailed report, due in 2012, how it determines the skilled manual male employee in accordance with Article 19(6), specifying the amount of his earnings, benefits and family allowances as established in Parts I-V of the report form or under Article 19 of the Convention.**

*Article 21. Review of the rates of cash benefits.* The Committee notes with interest that the Social Security Act was amended in 2009 by the Act to Amend the Social Security Act, the Armed Forces Social Security Act and the National Police Force Social Security Act, which entered into force on 30 March 2009 (supplement to *Official Gazette* No. 559). Thus, section 234 of the Social Security Act has been amended by section 11 of the amending Act which establishes that cash benefits shall be increased at the beginning of each year by a percentage equal to that of the previous year's inflation. **The Committee invites the Government to provide the statistical information requested under Article 21 of the report form.**

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

## **Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (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 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.

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

### ***Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1978)***

The Committee notes with *regret* that the Government's detailed report due in 2012 has not been received. Considering that the previous report supplied by the Government in 2008 reproduced the text of its report of 1998 and was therefore entirely unresponsive to the Committee's observation of 2007 and did not contain any information concerning the application of *Articles 21–32 of the Convention*, the Committee trusts that the Government of Ecuador will take 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.

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

## Egypt

### ***Equality of Treatment (Social Security) Convention, 1962 (No. 118)*** ***(ratification: 1993)***

The Committee notes the adoption in 2010 by the Parliament of new legislation on pensions that will replace the public pay-as-you-go (PAYG) pension system by a system of individual accounts as of 2012 and establish a minimum pension funded from the state budget for all residents aged 65 or older, including individuals who have not contributed to the pension system. ***The Committee hopes that, in the context of this reform, the Government will take the necessary measures with a view to giving effect to the following provisions of Convention No. 118 to which it has been drawing the Government's attention since the Convention was ratified.***

*Article 3 of the Convention. Equality of treatment* The Committee ***regrets*** to note that the Government's report does not contain any reply to the previous comments which read as follows:

According to section 2(2) of the Social Insurance Act (No. 79 of 1979), the provisions of this Act apply to foreign nationals on condition that the duration of their contract is not less than one year, and that there is a reciprocity agreement between their country of origin and Egypt, subject to non violating the provisions of conventions ratified by Egypt. The Government states nevertheless that the nationals of countries which have ratified Convention No. 118, enjoy insurance benefits provided under the Social Insurance Act regardless of the duration of their contracts or the existence of the reciprocity agreement. The same statement is made by the Government in its report of 2007 on Convention No. 19. The Committee takes due note of these statements and understands that the Convention has a higher rank in the national legal system than the law. The Committee notes that the Government has not supplied any documentary evidence requested by the Committee proving that the above interpretation given by the Government is applied in practice by the social security institutions. The Committee also recalls that in its previous reports on the application of Conventions Nos 19 and 118 the Government has been consistently making the opposite

statement that foreign nationals could enjoy social insurance benefits subject to the duration of their contract being not less than one year. ***In this situation and in order to dissipate any doubts as to the fact that the requirements of the Convention overrule the abovementioned limitations contained in the Social Insurance Act, the Committee asks the Government to instruct the responsible social security institutions in the country to disregard the duration of contract and reciprocity agreement requirements under section 2(2) of the Social Insurance Act with respect to the nationals of 37 countries which have also ratified Convention No. 118, and for the accident compensation benefits, with respect to the nationals of 120 countries which have also ratified Convention No. 19.***

***Article 5. Payment of benefits abroad.*** Referring to the issues raised in the Committee's previous comments, the Government indicates that beneficiaries residing abroad are classified by country of residence. Insurance and pension benefits are regularly transferred each month without any financial burden on beneficiaries in cases where bilateral agreements have been concluded with the country of residence of the beneficiary. This has so far been the case with Cyprus, Greece, the Netherlands, Sudan and Tunisia and the Government is willing to conclude more such agreements. In the absence of bilateral agreement, beneficiaries need to justify pension entitlements with the Egyptian embassies or consulates at their place of residence in order to have their pensions paid to their bank account inside Egypt. They may afterwards transfer their pensions to their country of residence through the international banking system.

While it takes due note of this information, the Committee once again stresses that with respect to its own nationals and nationals of any other member that has accepted the Convention's obligations for the branches in question, ***Article 5*** obliges the ratifying States to export benefits abroad *even in the absence of any bilateral social security agreements* with the country of nationality or the country of residence of the beneficiary concerned and to take *unilateral* measures to this effect. By placing the obligation to transfer benefits abroad on the State, ***Article 5*** of the Convention specifically seeks to prevent situations where beneficiaries would have to make their own individual arrangements for the transfer of their entitlements abroad at their own expense. By ratifying the Convention, the Government has undertaken to ensure that the responsible social insurance institutions shall deliver the abovementioned benefits to the new place of residence of the beneficiary outside Egypt and shall bear the cost of such transfer. For this purpose, appropriate banking arrangements shall be put in place with the help of the National Bank, if need be, and use shall be made of the administrative assistance of the countries concerned, which they have to afford to Egypt free of charge under ***Article 11*** of the Convention. The Committee observes that, in the absence of any bilateral agreement, the lack of practical methods for pensions transfer outside of Egypt often leads beneficiaries in practice to apply for lump sums (in accordance with sections 27 and 28 of the Social Insurance Act), which is contrary to the letter and the very purpose of the Convention, even when this is done at the request of the beneficiary. ***The Committee therefore once again strongly urges the Government to institute an effective system of the transfer of the Egyptian social security benefits abroad by taking appropriate measures either unilaterally or within the framework of bilateral and multilateral social security agreements with the countries with the highest number of pension beneficiaries. The Government may wish to seek technical assistance from the Office concerning the existing international legal frameworks for the maintenance of the acquired rights and rights in course of acquisition mentioned in Articles 7 and 8 of the Convention.***

***Article 10. Coverage of refugees and stateless persons.*** Referring to the Committee's previous comments, the Government states that refugees from Palestine and South Sudan are treated on an equal basis with Egyptian nationals with respect to social security. ***The Committee understands that all refugees and stateless persons other than the ones mentioned above also benefit from the provisions of the Convention without any condition of reciprocity and asks the Government to confirm such understanding in its next report.***

## France

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1974)**

***Article 4(1) of the Convention. Equality of treatment without any condition of residence, including when establishing entitlement.*** The Committee refers to its previous comments and notes that French law and practice continue to impose a condition of residence for sickness benefit, maternity benefit, invalidity benefit and family benefit, subject to the provisions of certain bilateral agreements. The Committee further notes that the condition of residence is not applied with respect to employment injury pensions for the nationals of the other countries party to the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), (120 States). In the absence of a bilateral agreement, the condition of residence does not apply in practice in cases where the medical and administrative checks required for the provision of benefits can be carried out in the State of residence. As regards the lifting of the condition of residence for nationals of countries party to Convention No. 118, the Government indicates that most States which have a social security system impose the condition of residence on their territory for the grant and provision of benefits in cash, especially pensions and annuities. This leads France to place its undertakings in this field in the context of the second phrase of ***Article 4(1)***, which provides for the possibility of imposing a condition of residence in cases where the legislation of the country of residence also subjects the grant of benefits to the same condition. The Government adds that French law provides, where necessary, for a partial or total lifting of the reciprocal conditions of residence by means of a bilateral agreement with each State concerned.



The Committee recalls that, under *Article 4(1)*, countries which have ratified the Convention are bound by a system of general reciprocity and undertake to ensure equality of treatment without any condition of residence for the nationals of any other State for which the Convention is also in force. However, the application of this guiding principle of the Convention may be suspended with regard to the benefits of a given branch of social security with regard to the nationals of any Member whose legislation imposes a condition of residence on its territory to the grant of the same benefits. ***In view of the intention expressed by the Government in its report to systematically apply the reservation provided for in the second phrase of Article 4(1), the Committee requests the Government to indicate in its next report which countries, among those that have ratified the Convention, apply a condition of residence to the grant of benefits to French nationals with respect to the branches of social security that are also accepted by France, namely:***

- ***medical care: Plurinational State of Bolivia, Brazil, Cape Verde, Denmark, Ecuador, Egypt, Finland, Germany, Guinea, India, Iraq, Ireland, Italy, Libya, Mexico, Philippines, Sweden, Tunisia, Turkey, Uruguay and Bolivarian Republic of Venezuela;***
- ***sickness benefit: Barbados, Plurinational State of Bolivia, Brazil, Cape Verde, Denmark, Ecuador, Egypt, Finland, Germany, Guinea, India, Iraq, Ireland, Italy, Libya, Madagascar, Mexico, Philippines, Sweden, Tunisia, Turkey, Uruguay and Bolivarian Republic of Venezuela;***
- ***maternity benefit: Bangladesh, Barbados, Plurinational State of Bolivia, Brazil, Cape Verde, Central African Republic, Ecuador, Egypt, Germany, Guatemala, Guinea, India, Iraq, Israel, Italy, Jordan, Libya, Madagascar, Mexico, Pakistan, Philippines, Sweden, Tunisia, Turkey, Uruguay and Bolivarian Republic of Venezuela;***
- ***invalidity benefit: Brazil, Cape Verde, Democratic Republic of the Congo, Ecuador, Egypt, Iraq, Italy, Jordan, Kenya, Libya, Madagascar, Mauritania, Mexico, Philippines, Rwanda, Syrian Arab Republic, Tunisia, Turkey and Bolivarian Republic of Venezuela;***
- ***survivors' benefit: Barbados, Brazil, Cape Verde, Ecuador, Egypt, Guinea, Iraq, Israel, Italy, Jordan, Kenya, Libya, Mauritania, Mexico, Norway, Philippines, Rwanda, Syrian Arab Republic, Tunisia, Turkey and Bolivarian Republic of Venezuela;***
- ***family benefit: Plurinational State of Bolivia, Cape Verde, Central African Republic, Guinea, Ireland, Israel, Italy, Libya, Mauritania, Norway, Tunisia and Uruguay;***
- ***as regards employment injury benefit, the Committee requests the Government to indicate the manner in which it gives effect to the Convention with respect to the nationals of the following five States which have accepted the provisions of Convention No. 118 for this branch but are not party to Convention No. 19: Ecuador, Guinea, Jordan, Libya and Turkey.***

## Greece

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1952)**

*Article 2 of the Convention. Conformity of the national list of occupational diseases with the schedule established by the Convention.* The Committee notes the Government's indication that an inter-ministerial committee has been established to examine the incorporation of the European schedule of occupational diseases into national law. On completion of its mandate on 1 February 2008, the aforementioned committee drew up a new national list of occupational diseases which is in conformity with Annex I to Commission Recommendation 2003/670/EC of 19 September 2003 concerning the European schedule of occupational diseases. Referring to the comments which the Committee has been making for many years, the Government states that the draft of the new list of occupational diseases is not restrictive, does not define the activities which can result in occupational disease, and contains a new heading relating to skin cancers. The draft of the new list must be the subject of a presidential decree signed jointly by the competent ministers before coming into force. ***The Committee notes this information with interest and requests the Government to send a copy of the new list of occupational diseases with its next report.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes that, according to the statistical information provided by the Government, although the number of new cases of occupational disease registered each year varied between 20 and 26 cases per year during the 2001–05 period, this figure has dropped sharply since 2005. Seven cases of new occupational diseases were recognized in 2006, six in 2007, five in 2008 and four in 2009, the Government indicating that the number of registered occupational diseases refers only to diseases which give rise to the payment of an invalidity pension. ***The Committee requests the Government to explain the reasons for this significant drop in the number of new cases of recognized occupational disease and provide further information on the functioning in practice of the procedure for recognizing a disease as occupational, on the operation of the labour inspectorate, the existence of preventive measures, the number of cases where recognition was refused, etc.***

## ***Social Security (Minimum Standards) Convention, 1952 (No. 102)*** ***(ratification: 1955)***

The Committee notes the Government report for the period ending 31 May 2011 received in February 2012 and its reply to the Committee's previous comments received in September 2012, as well as the 30th annual report on the application by Greece of the European Code of Social Security for the period from 1 July 2011 to 30 June 2012.

### ***Actuarial evaluation of the 2010 pension reform***

In its 29th report on the European Code of Social Security, the Government explained the profound reform of the pension system, carried out by Act No. 3863/2010 on the "New social security system and relevant provisions", by the need to safeguard its long-term viability and referred to an actuarial evaluation to be carried out in 2011 to assess the sustainability of reforms. In the 30th report on the Code, the Government indicates that such an evaluation was successfully carried out by the National Actuarial Authority in 2011 and supplied a copy of it (*Ageing Projections Exercise 2012. Greek Pension System Fiche. European Commission, Economic Policy Committee, Ageing Working Group*). The 2012 Projection Exercise evaluated changes to the main and auxiliary pension provisions in Greece brought about by the reform of 2010; new social security legislation implemented after September 2011 has not been incorporated. The main pension provision includes ten mandatory social insurance schemes, which cover salaried employees and self-employed persons grouped in certain occupations; the auxiliary pension provision includes supplementary social insurance schemes, each of which corresponds to a main social security scheme and runs in parallel with it. Together with the social solidarity grant provision (EKAS) to residents with no or low income, the main and auxiliary pension provisions account for almost 99 per cent of the total public pension expenditure in Greece. The 2012 projections were based on the present version of the ILO Pension Model developed to support actuarial reviews of statutory social security pension schemes and provide the quantitative basis for policy decisions. The projections concerning the main pension provision were peer reviewed by ILO experts.

The Committee has examined the main findings and conclusions of the 2012 projections and wishes to compliment the National Actuarial Authority for having accomplished such a complex undertaking of aggregating disparate data from multiple pension schemes into a common scenario. The reform of 2010 introduced a consolidated architecture of the pension system and new universally binding rules on entitlements, contributions, accumulation and indexation of pension rights. This permitted the previously highly fragmented Greek pension system to be financially monitored and allowed for meaningful actuarial projections which showed that, over the next 50 years, the application of stricter eligibility criteria and the reduction of the benefit replacement rate due to the decrease of the accrual rates substantially restrain benefit expenditure. Thus, the total public pension expenditure, including the EKAS, for 2060 reaches 14.6 per cent of GDP, which represents an increase of only 1.1 per cent of GDP over the period of 50 years and not the 10 per cent initially feared by the Government. This result however was achieved at the price of significantly curtailing pension rights by increasing pension age from 60 to 65, extending the full contributory period from 35 to 40 years, lowering the accrual rates and calculating pensions on the basis of the whole career earnings, instead of the five best years in the last ten before retirement. The Committee wishes to underline in this respect that, however tough the new pension rules happened to be, they stayed within the minimum standards of protection prescribed by the Convention and applied equally to all insured persons so that all current and future workers shared the burden on a pro rata basis. In particular, the combined replacement rate of the main and auxiliary pensions was maintained well above the 40 per cent level required by the Convention for the whole projected period. The 2012 projections confirmed therefore that the reforms introduced by Act No. 3863/2010 were sufficient to ensure the long-term viability of the pension system while maintaining it in line, conceptually and technically, with the minimum standards guaranteed by the Convention. According to the Government, the assessment of the 2012 projections by the Ageing Working Group of the European Commission in terms of the sustainability of pension reform in November–December 2011 was highly positive, notwithstanding the fact that the contribution of subsequent pension reduction measures adopted since September 2011 has not yet been included in this actuarial evaluation. The Committee wishes to emphasize this conclusion, which permits to distinguish the 2010 reform measures strengthening the long-term viability of the social security system from the subsequent austerity measures, which put into question the ability of the system to withstand the continuing contraction of the economy, employment and public finances.

### ***Subsequent policies of social austerity***

With regard to the pension reduction measures subsequent to the 2010 reform, which were taken in November 2011 and three times in 2012, in February, May and November, the Government states in its reply to the comments on the Convention that they were adopted within the application framework of the new Memorandum of Understanding between the Government of Greece and the IMF, the European Commission and the European Central Bank (referred to as troika). The Committee notes that these measures formed part of the austerity package and reform strategy imposed on Greece by its international creditors as a condition to unlock successive tranches of bailout funds necessary to prevent the bankruptcy of the country threatening to provoke a chain reaction throughout the European financial system. Being a member of the Eurozone, Greece did not have the option of devaluation to adjust its relative prices and wages and, to service its debts, it was therefore compelled to devalue the standards of living of its people. New cuts in pensions were introduced since 1 November 2011 by Act No. 4024/2011, including 40 per cent reduction of the part of the monthly main pension

exceeding €1,000 for pensioners who have not attained the age of 55; 20 per cent reduction of the pension part exceeding €1,200 for pensioners aged 55; and 15–30 per cent reductions of various auxiliary pensions. From May 2012, main pensions, which after previous reductions still exceeded €1,300, were additionally reduced by 12 per cent with retroactive effect for the period January–April 2012 (section 6(1) of Act No. 4051/2012). A new package of austerity measures under the Memorandum of Understanding on the Medium-Term Fiscal Strategy 2013–16 (Memorandum III) was approved by the Greek Parliament in November 2012. With respect to pensions, the legal retirement age was set to rise from 64 to 67 on 1 January 2013, including for social benefits of the EKAS; all pension payments of over €1,000 were cut by between 5 and 15 per cent; Christmas, Easter and summer bonuses for pensioners were abolished, among other measures.

### ***Impact of austerity measures on poverty levels***

In August 2012, in the information supplied on Convention No. 102, the Government stated that, despite the specific measures to reduce pensions, the minimum levels set by Convention No. 102 were not affected. Minimum pensions granted by the Social Insurance Institute (IKA–ETAM) as well as other benefits granted to vulnerable social groups, such as the EKAS, the benefit for para/quadruplegia and the total disability benefit, have not been affected. Medium-income pensioners with pensions up to €1,000 per month have either not been affected by the cuts in main pensions or their income has undergone only a slight reduction not exceeding 5 per cent. The number of pensioners who have not been affected by any reduction amounted to around 1 million persons. ***The Committee observes however that, after the new round of pension cuts in November 2012, this information has become outdated and would have to be reviewed by the Government in its next report. In particular, the Government should be requested to indicate the exact minimum amounts of the benefits still guaranteed by the national legislation under all accepted Parts of the Convention.***

The Committee further observes that pension cuts across the board have put a large percentage of the Greek population into instant poverty with no indication of how and when this population would recover. According to Eurostat data, in one year, from 2010 to 2011, the percentage of population suffering material deprivation (lack of at least three out of nine deprivation items) increased by 4.3 per cent and an additional 2.2 per cent of older persons over 60 fell below the risk of poverty threshold; the overall share of persons with an income below the risk of poverty threshold reached the highest point in the last decade. In total, in 2010, 27.7 per cent of Greek citizens or more than 3 million persons were at risk of poverty or social exclusion. The Committee notes that the information supplied by the Government included no such data and did not respond to the Committee's previous demand to assess the spread of poverty in the country and to consider social security policies in coordination with its tax, wage and employment policies under the Memorandum of Understanding. The Committee recalls that, in September 2011, the Government informed the High-level ILO Mission that "questions such as the impact of the pension reform on poverty levels as well as the sustainability of the social security system ... have not been addressed in the discussions with the troika". ***In view of the serious deterioration of the situation in Greece in 2012, the Committee considers it an urgent duty of the Government to assess past and future social austerity measures in relation to one of the main objectives of the Convention, which is the prevention of poverty. In particular, the Committee would like the Government to be asked to put this question on the agenda of its future meetings with the parties to the international support mechanism for Greece.***

### ***Need to link social benefits to subsistence level***

While stressing the need to closely monitor the dynamics of poverty in the country, the Committee wishes to underscore that in the present situation the existing poverty indicators linked to the median income would no more reflect the real state of deprivation of the population. In fact, in the economy where wages are in freefall, so is the median income; the related poverty threshold may then fall below the level of physical subsistence of an individual. Where benefits are calculated as percentage of substandard wages, social security system resembles an iceberg where only a small part of benefits is paid above the subsistence level, while the bulk of the system operates below this level, where the application of most provisions of the Convention becomes meaningless. The Committee considers that the State would cease to fulfil its social responsibility if its social security benefits did not ensure the subsistence of the persons protected. With these considerations in mind, the Committee is concerned that, according to the report of the high-level ILO mission, there is no concept of a subsistence wage in Greece, and that the minimum pension is set well below the poverty threshold. In February 2012, the minimum wage was reduced by 22 per cent and by 32 per cent for workers below the age of 25 and has slumped to the level of the second half of the 1970s. The Committee considers that in a country where large segments of the population live below the poverty threshold, wages and benefits should be linked to indicators of the physical subsistence of the population determined in terms of the basic needs and the minimum consumer basket. ***The Committee would like the Government to explain in its next report whether any subsistence level is established for different age groups of the population and, if so, how it is determined and how it is related to the minimum wage and minimum amounts of social security benefits.***

### ***Concern for justice and equity in handling the crisis***

The above considerations which successively raise concerns about the impact of austerity policies on the viability of the Greek social security system, its observance of the minimum standards prescribed by the Convention, and its capacity to reduce poverty and ensure subsistence, still do not respond to no less important concern for the principles of social solidarity, justice and equity in handling the crisis. The Committee has also invited the Government to explain to what extent it abides by these principles in the context of the implementation of the international support mechanism for

Greece. The Committee notes that while the Government has not replied to this question, the Greek National Commission for Human Rights and the Greek Court of Auditors have expressed strong criticism of its austerity policies. On 8 December 2011 the Greek National Commission for Human Rights – an advisory body to the Government in matters of human rights protection – issued the Recommendation with the self-explanatory title “The imperative need to reverse the sharp decline in civil liberties and social rights”, where it condemned the “ongoing drastic reductions in even the lower salaries and pensions” and “the drastic reduction or withdrawal of vital social benefits”. As this Recommendation has not been followed by the Government, the Court of Auditors, which vets Greek laws before they are submitted to parliament, one year later, in November 2012, ruled that recurrent cuts in pensions were contrary to articles 2, 4, 22 and 25 of the Constitution as they conflict with the constitutional obligation to respect and protect human dignity, the principles of equality, proportionality and the protection of labour. While decisions of the Court of Auditors are not obligatory for the Government and the State, such a ruling opens the legal way to anyone who wants to file a complaint and oppose pension cuts in court. ***Notwithstanding the fact that the Government did not follow the ruling of the Court of Auditors, the Committee requests it to fully reflect the position of the judiciary power of the Greek State in its next report, indicating in particular the number of cases opposing pension cuts in courts and the nature of the decisions taken by the latter.***

With respect to the principles of justice and equality in relation to social austerity measures, one should recall that *Article 71(1)* of the Convention demands that cuts in benefits, likewise their costs, shall be borne collectively taking into account the economic situation of the classes of persons protected: the fortunate classes should bear a proportionately larger share of the burden, while persons of small means should be preserved from hardship. The Committee understands that the situation in Greece is rather the opposite: the troika stresses the need to improve Greece’s competitiveness by reducing non-wage labour costs and allowing wages to adjust downward without regard to collective agreements or the basic subsistence needs, while the Government transforms these recommendations into direct cuts in wages and pensions, which places a disproportionately large share of the country’s efforts on the ordinary people. In contrast, in its previous observation, the Committee considered it incumbent upon the Government to assess, together with the troika, the resources available to those who evade contributing to the country’s efforts, in order to ensure that they are forced to contribute by all possible legal means. ***Taking into account the widespread feeling of social injustice in the imposition of austerity measures, the Committee requests the Government to indicate what measures were taken to increase contribution to the country’s efforts by the most fortunate contributors – individuals, banks, companies, industries, civil and religious organizations, and other bodies able to contribute to the social welfare system through taxes or earmarked contributions.***

#### ***Responsibility of the State for the reverse engineering of austerity***

The Committee observes that by continuing social security reforms by means of social austerity policy the Greek State has shifted the balance between its social responsibility towards its people and the fiscal responsibility towards its creditors in favour of the latter. The Committee notes with *regret* that the evolution of the situation in Greece confirms its previous conclusion that applying exclusively financial solutions to the economic and social crisis could eventually lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest. It is with great concern that the Committee notes in this respect that the Greek economy is predicted to shrink 6.5 per cent in 2012 and a further 4.5 per cent in 2013. To prevent such outcomes, the principle of the general responsibility of the State for the proper governance of its social security system, which extends throughout all the provisions of the Convention, reminds all the constituent powers of the State of their collective obligation to ensure that the policy of fiscal and financial consolidation does not undermine the fulfilment of the social and human objectives of the Convention at least at the level permitting to maintain the protected population “in health and decency” (*Article 67(c)* of the Convention). ***With this idea in mind, the Committee requests the Government to ask the National Actuarial Authority to analyse the redistributive effects of benefit cuts and to assess the overall impact of the austerity policies on the sustainability of the social security system. It should also explore and provide information on the most rapid scenarios of undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level, which at least prevents the “programmed” impoverishment of the beneficiaries. The Committee is confident that such reverse engineering of austerity may restore some hope in the future of the Greek social security system and provide valid grounds for resuming national social dialogue for this purpose. The Committee hopes that the Greek Ministry of Labour and Social Security will make full use of the ILO technical assistance to support the quantitative analysis of these options by the National Actuarial Authority, which could then review the 2012 projections accordingly.***

*[The Government is asked to reply in detail to the present comments in 2013.]*

## **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 benefit.* 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 (Agriculture) Convention, 1921 (No. 12)**  
(ratification: 1977)

**Workmen's Compensation (Accidents) Convention, 1925 (No. 17)**  
(ratification: 1977)

**Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)** (ratification: 1977)

**Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)**  
(ratification: 1977)

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

*Reporting obligations.* The Committee notes the Government's reports on Conventions Nos 12, 17, 18 and 19, received for the first time since the year 2000, notwithstanding the numerous reminders sent to the Government. It regrets, however, that they still do not reply to most of the questions raised in the comments of 2001 and repeated in 2008, 2009 and 2010. The National Workers' Union of Guinea (UNTG) in its observations on the Government's reports on ratified Conventions, stressed that the Government should step up its efforts to comply with international labour standards and bring its legislation in line with the ILO Conventions. In the UNTG's opinion, the Government should take all necessary measures to strengthen its technical, material and financial capabilities to enforce the application of the labour standards in the private and public sectors. *The Committee hopes that the Government will take these observations into account and will not fail to include the information requested in its next detailed reports on these Conventions due before 1 September 2012. The Government is also reminded to provide detailed information on the practical application of these Conventions as required in Part V of the report forms, particularly on the number and nature of the occupational accidents reported and the amount of benefits paid.*

*Legal framework of protection against occupational accidents and diseases in Guinea-Bissau.* The said legal framework is composed of several laws and decrees, including Decree No. 4/80 on Compulsory Insurance on Occupational Accidents and Diseases (6 February 1980), Regulatory Decree No. 6/80 regulating Decree No. 4/80, Legislative Decree No. 5/86 on Establishment of a Social Protection Regime (29 March 1986), Legislative Decree No. 1/97 on the Replacement of the National Insurance and Social Protection Institute by the National Institute of Social Security (INPS) and GUIBIS-Guinea-Bissau Insurances SARL (29 April 1997), and Act No. 4/2007 on the Legal Framework for Social Protection (3 September 2007). Decree No. 4/80 governs compulsory insurance against occupational accidents and diseases providing for the workers' (and their family members') right to compensation. It sets the definition of occupational accidents and diseases and rules regarding the exercise of the rights to compensation under the compulsory insurance scheme, and financed through employers' and workers' contributions, operated by the INPS. Regulatory Decree No. 6/80 establishes different types of benefits to which a worker suffering an occupational accident or disease is entitled according to the degree of incapacity, and sets forth the rules to determine the base salary upon which compensation is paid. Legislative Decree No. 5/86 repeals the provisions of the Agricultural Code and establishes the basis of the general regime of social security. Legislative Decree No. 1/97 replaces the former National Insurance and Social Protection Institute with the INPS. Lastly, Act No. 4/2007 establishing a Legal Framework for Social Protection for the population of the country, consists of three schemes: Citizenship Social Protection of a non-contributory nature; Mandatory Social Protection, which is a contributory regime covering all wage earners (nationals or foreigners); and a voluntary Complementary Social Security scheme. *The Committee would ask the Government to complete the above description of the legal framework existing in the country and providing protection against occupational accidents and diseases, clarifying in particular: (i) whether Act No. 4/2007 has entered into force and been regulated; (ii) whether Decree No. 4/80 and Regulatory Decree No. 6/80 have been repealed by Act No. 4/2007; (iii) the relations between Regulatory Decree No. 5/86 and Act No. 4/2007, with respect to their scope of application, rules regarding foreign workers, benefits and degrees of compensation for incapacity of workers due to occupational accidents and diseases; (iv) proposals for reforming this framework and elaborating new legislation.*

*Adoption of the list of occupational diseases.* The Committee recalls that back in 2000, the Government stated that the INPS, which has competence for workers' compensation for occupational accidents and diseases, was having difficulty in identifying occupational diseases, and consequently, the Ministry of Public Health had not been able to adopt a list of such diseases. In its 2011 report on Convention No. 18, the Government regretted that Guinea-Bissau has neither enacted a legal regime regulating occupational diseases nor adopted a list of such diseases but reported that a Commission had been established to review the legislation regarding industrial accidents and to draft legislation and establish a list of occupational diseases. While

taking due note of these developments, the Committee wishes to remind the Government that by ratifying Convention No. 18 it has made the list of diseases in Schedule to *Article 2 of the Convention* part of the national legal order. That list was elaborated by the International Labour Conference back in 1925 specifically for the purpose of providing countries, which had no capacity to establish their own lists, with a ready-made compendium of diseases recognized as occupational on the basis of the best international experience available at that time. Since then, the ILO list of occupational diseases has been complemented on several occasions (see Conventions Nos 42 and 121 and Recommendation No. 194) by new diseases the professional origin of which was ascertained by the evolution of scientific knowledge. The diseases listed in Convention No. 18 ratified by Guinea-Bissau therefore constitute the minimum protection to be guaranteed and must be automatically recognized as occupational where contracted in the conditions prescribed in the Schedule by all the national authorities for the purposes of workmen's compensation. **The Committee would like the Government to explain what legal or other reasons prevented it for so long from bringing this list to the attention of the national labour administration, social insurance and judicial authorities in order to ensure the practical implementation of the obligations assumed by the country under Convention No. 18. The Committee again expresses the hope that the Government will take all necessary steps to ensure, through the adoption of the new legislation referred to in its report, that the list of occupational diseases established by the Convention becomes fully operational and legally enforceable in the country for the purpose of workmen's compensation.**

*Compensation for occupational accidents and diseases.* The Committee notes from the report on Convention No. 17 that, in practice, compensation may be paid wholly as a lump sum. **Please indicate what authority is competent to decide that payment shall be made in a lump sum and what guarantees, if any, for the proper utilization of the lump sum it ordinarily requires, in accordance with Article 5 of Convention No. 17.** The report also states that public servants are not subject to any legal framework in relation to compensation in case of industrial accidents, but, if a public servant suffers a personal injury due to an industrial accident, he/she receives compensation in the form of a sum of money. **The Committee would ask the Government whether any consideration was given to the possibility to include public servants within the legal framework protection against occupational accidents and diseases.** Finally the Committee notes that, according to section 17(2) of Decree No. 6/80, where the incapacity is such that the injured person must have the help of another person or special care, the pension may be increased to up to 100 per cent of the basic wage. **Please indicate the number of people who are actually receiving such an increased pension.**

*Application to agricultural wage earners.* In its previous reports on Convention No. 12, the Government had indicated that Decrees Nos 4/80 and 6/80 governing compulsory insurance against occupational accidents and diseases applied to agricultural wage earners. In its 2011 report, the Government indicates that, according to section 1(b) of Chapter I of Legislative Decree No. 5/86 only agricultural wage earners whose employers can be identified are mandatorily covered, while independent agricultural wage earners who do not perform their work in a "family regime", as set out in section 2(2)(d) of Decree No. 4/80 are excluded from coverage. Section 17 of Act No. 4/2007 provides, however, that wage earners in all branches and sectors are to be included in the Mandatory Social Protection System, provided that the employer they work for can be identified, with the exclusion only of domestic workers who are subject to a special regime. **The Committee would like the Government to explain what agricultural wage earners are covered by the "family regime" and whether they benefit from the protection given by the legislation cited above. Please explain also the special regime applicable to the domestic workers.**

Section 6 et seq. of Decree No. 4/80 set forth a general definition of occupational accidents as well as the definitions related to specific sectors such as agriculture, where according to the Government, occupational accidents are defined as the wrong use of chemical products and protection equipment. **The Committee wishes to point out that the principle of equality of treatment of agricultural wage earners implies that they should benefit from the same definition of occupational accidents that is applicable to other workers. The Government should therefore consider harmonizing the different definitions of occupational accidents so that workers in different sectors of activities would benefit from the same protection and compensation.**

The Government states that it has no statistics on occupational accidents and diseases because most of agricultural wage earners are not aware of their obligation under section 20 of Decree No. 4/80 to report the occurrence of any occupational accident or disease to the National Institute of Social Security. The General Labour Inspectorate has neither special knowledge in the field of agricultural work nor financial nor human resources to carry out inspections in this sector. Most occupational accidents and diseases are caused by the fact that agricultural workers do not wear suitable protection equipment in carrying out their tasks. Some companies fail to comply with their obligations under occupational accidents and diseases legislation and some others are not even registered with the INPS. The Committee notes the practical difficulties encountered by the Government in the application of Convention No. 12. It observes that these difficulties will not go away without systemic and vigorous action taken by the Government in cooperation with the social partners to raise awareness of workers and companies of their respective rights and obligations, establish simple and rapid procedures for reporting occupational accidents supported by insurance compensation and labour inspection, promote the use of protection equipment and safer technologies, etc. **The Committee asks the Government to step up its efforts to reduce the gap between the agricultural and the industrial sectors with regard to protection against occupational accidents and diseases and to indicate the concrete measures taken in this respect in its next report.**

*Equality of treatment of foreign workers.* In its previous comments concerning Convention No. 19, the Committee pointed out that section 3(1) of Decree No. 4/80 is inconsistent with the Convention in that it lays down reciprocity as a requirement for equality of treatment between foreign workers employed in Guinea-Bissau and national workers. In response, the Government mentions that article 28 of the Constitution forbids any discrimination between foreigners and citizens and that under the current legal order, equality of treatment regarding accident compensation is granted to all workers. In practice, the Government indicates that the General Labour and Social Security Inspectorate did not find any situation amounting to unequal treatment of injured workers, and that no judicial decisions have been rendered evidencing unequal treatment between foreign and national workers.

The Committee also notes that section 17(2) of Act No. 4/2007 provides that workers who suffered injuries as a result of an industrial accident are covered by the mandatory social protection scheme without any condition as to residence in the country, and section 3 requires the Government to foster the conclusion or adherence to international agreements aiming at the reciprocal recognition of equality of treatment of the nationals of the countries concerned. **The Committee recalls, in this respect, that Convention No. 19 lays down a system of automatic reciprocity between the 121 ILO member States which have ratified it, and thereby ensures that nationals of all countries party to the Convention, as well as their dependants, benefit from national treatment in respect of workmen's compensation. It would therefore be more consistent with the Convention and the Act No. 4/2007 for section 3(1) of Decree No. 4/80 to be amended so as to delete the reciprocity requirement. The Committee also requests the Government to indicate whether, pursuant to Article 1(2) of the Convention, any compensation is paid for injured persons or their dependants residing outside the country, and if so, to provide the statistical data confirming these payments.**

**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)**

In reply to the issues raised in the Committee's previous observation, the Government indicates that there has been no change in the national legislation on occupational diseases and the necessary measures to ensure compliance with the Convention have yet to be taken. In previous reports, the Government had indicated that the competent authorities have been requested to accelerate the review procedure. *The Committee therefore trusts that the Government will take the necessary measures to amend the list of occupational diseases currently established by Regulation No. 34 of 1969, implementing Act No. 15 of 1969 on national insurance and social security (Cap. 36:01), with respect to the following points:*

- No. 1(x), (xi), (xii) and (xiv) on the list are to be replaced by a heading containing in general terms all halogen derivatives of hydrocarbons of the aliphatic series;
- 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;
- 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;
- No. 1(iii), which refers to poisoning by phosphorus and its compounds, should include the inorganic compounds of phosphorus;
- No. 2 should include, among the processes likely to induce anthrax infection, all loading and unloading or transport of merchandise of any kind;
- 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 the abovementioned issues have been regularly brought to its attention since 1972.

## Haiti

### **Workmen's Compensation (Agriculture) Convention, 1921 (No. 12) (ratification: 1955)**

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1955)**

### **Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1955)**

### **Sickness Insurance (Agriculture) Convention, 1927 (No. 25) (ratification: 1955)**

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1955)**

*General situation.* According to the Government's report, the Act of 28 August 1967 establishing the Employment Injury, Sickness and Maternity Insurance Office (OFATMA) covers all dependent workers, regardless of the sector of activity. With regard to the agricultural sector, the report specifies that, while agricultural workers are not excluded by the Act, they cannot benefit because of the predominance of family farming and the absence of agricultural enterprises. The Committee also notes that over 95 per cent of the active population in Haiti is engaged in the informal economy. The Committee also notes that under the 1967 Act, the OFATMA currently manages employment injury insurance, but that it has still not been possible to set up a sickness insurance scheme.

In this context, the initiatives indicated by the Government mainly address the training of labour inspectors and the construction of two hospitals in the north and south of the country. The Committee also notes the Government's statements that it plans to continue its efforts, on one hand to progressively establish a sickness insurance branch covering the population as a whole and, on the other to enable the OFATMA to regain the trust of the population. The Committee takes due note of these points. *In order to better assess the challenges facing the country in the application of the social security Conventions and support the initiatives taken in this regard more effectively, the Committee requests the Government to provide further information in its next report on the reasons for the population's loss of trust in the OFATMA, and to provide key figures on the operation of the employment injury insurance scheme administered by the OFATMA (numbers covered, amount of contributions collected annually, number of employment accidents and occupational diseases recorded, amount of benefits paid for employment injury).*



*International assistance.* The Committee notes that the Government's actions receive substantial support from the ILO and the international community, particularly in terms of labour inspection. In addition, since 2010, the ILO and the whole of the United Nations system have made available to the Government their expertise for the establishment of a social protection floor. The Committee also notes that *Better Work*, a joint ILO and International Finance Cooperation programme, operating in the textile sector in Haiti with a view to improving both working conditions and productivity, has noted that the failure to pay social security employment injury and old-age pension contributions was a widespread phenomenon in the textile industry and it prioritized this issue. Through targeted actions and, in particular, the organization of information meetings of the National Old-age Insurance Office (ONA) in the enterprises concerned, *Better Work*, in its biannual report of October 2012, noted a significant improvement in the payment of social security contributions to the ONA and the OFATMA. ***The Committee invites the Ministry of Labour and the OFATMA to take these targeted actions regarding contributions into consideration with a view, where appropriate, to their replication in other sectors of the formal economy in Haiti.***

Regarding the establishment of a social protection floor, the Committee considers that it is necessary for the Government to envisage as a priority establishing mechanisms to provide the population as a whole, including informal workers and their families, with access to essential health care and a minimum income when their earnings capacity is affected. In this respect, the Committee emphasizes that, in order to provide guidance to States where the social security systems are facing difficulties in light of the national economic and social situation and to guarantee respect for the right of everyone to social security, the International Labour Conference adopted the Social Protection Floors Recommendation, 2012 (No. 202), with a view to the establishment of all the basic social security guarantees to prevent and alleviate poverty, vulnerability and social exclusion. In this connection, the implementation of Conventions Nos 12, 17, 24, 25 and 42 and of Recommendation No. 202 should continue in parallel, seeking and exploiting synergies and complementarity.

The Committee recalls in this regard that the establishment of a social protection floor has been included by the Haitian Government as one of the elements of the *Action Plan for National Recovery and Development of Haiti*, adopted in March 2010. However, since then this objective appears not to have led to the development of a national policy on the subject. ***Recalling that the Office's technical assistance, coordinated with that of the United Nations system as a whole, has been made available to the Government, the Committee invites it to provide information in its next report on the initiatives taken with a view to establishing a social protection floor.***

*[The Government is asked to reply in detail to the present comments in 2013.]*

### ***Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1955)***

*Article 4 of the Convention. Mutual assistance among States which have ratified the Convention.* The Committee notes that many Haitian workers present in the Dominican Republic have no social security coverage, including with regard to industrial accidents. The Committee notes that a representation under article 24 of the ILO Constitution concerning the application of Convention No. 19 by the Dominican Republic was submitted by a Dominican trade union organization. This representation was declared receivable by the ILO Governing Body at its 310th Session (March 2011) and is currently being examined by a tripartite committee. ***Recalling that, under Article 4 of the Convention, States which ratify the Convention undertake to afford each other mutual assistance with a view to facilitating its application, the Committee invites the Government of Haiti, jointly with the Government of the Dominican Republic, to include labour migration and migrant workers' access to social security as priority themes of dialogue between the two countries.*** Noting the existence of the cooperation project on gender-aware labour migration policies in the Nicaragua–Costa Rica–Panama and Haiti–Dominican Republic corridors (*Políticas de migración laboral sensibles al Género en los corredores Nicaragua–Costa Rica–Panamá y Haití–República Dominicana*), the Committee reminds the Government that it may avail itself of technical assistance from the Office.

## **Honduras**

### ***Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1964)***

The Committee notes the Government's report and the observations received in August 2011 from the Single Confederation of Workers of Honduras (CUTH). The CUTH refers to the conditions faced by Miskito workers who engage in fishing activities in the form of diving for crayfish and prawn. These observations, together with the Government's reply received on 9 October 2012, are examined in relation to the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

The Committee has been referring for many years to problems in the operation of the system for the notification of industrial accidents and, in particular, occupational diseases. The Committee notes the very low number (66) of occupational diseases which were the subject of compensation between 2007 and 2012. It also notes that the Government, in its last report, does not provide any information on the reasons for the lack of applications for compensation for

temporary or permanent incapacity with respect to the hundreds of cases of acute poisoning from organophosphorus pesticides recognized as being of occupational origin to which the Government referred in its previous report.

In the light of the above, the Committee notes with **concern** that the Government makes no further mention in its last report of its intention to reform the legislation by introducing the obligation to notify occupational diseases. **The Committee therefore strongly encourages the Government to adopt legislative measures and practices in order to improve the operation of the system for the prevention, registration and compensation of occupational diseases.**

*[The Government is asked to reply in detail to the present comments in 2014.]*

## India

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1964)**

*Improvement of coverage and application in practice.* The Committee notes that the two Acts through which the Convention is applied were recently revised: the Workmen's Compensation Act, 1923, was amended by the Employees' Compensation Act, 2009, and the Employees' State Insurance (ESI) Act was amended by the ESI (Amendment) Act, 2010. The Committee notes with **interest** that these revisions broaden the coverage of both Acts and that the Employees' Compensation Act now provides for the full reimbursement of actual medical expenditure incurred for treatment of occupational injuries, enhances the minimum rates of compensation and sets a mechanism for their re-evaluation from time to time. The Committee notes that the ESI scheme would now cover 15.4 million employees. It observes that, according to section 2(9)(ii) of the ESI Act, contract workers are also covered by the scheme. **The Committee invites the Government to provide in its next report information and statistics regarding the number of contract workers actually receiving ESI benefits.** With regard to the application of legislation in practice, the Committee observes that the number of detected and compensated occupational diseases remains as low as 50 for the 2011–12 period, three types only of occupational diseases having been registered. While noting the initiatives mentioned in the Government's report, such as the establishment of the Institute of Occupational Health and Environment Research or the training of dispensary doctors on occupational diseases, the Committee can only conclude that the current mechanisms for screening and compensating occupational diseases are not effective. **The Committee therefore once again urges the Government to take more significant action in consultation with the social partners in order to raise their awareness of the risks of occupational diseases and the need to make prevention, screening and compensation of occupational diseases part of the enterprise culture.**

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Japan

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1928)**

With reference to its observation of 2007, the Committee notes with **satisfaction** that, according to the Government's report, received in October 2012, the Immigration Control and Refugee Recognition Act No. 319 of 1951 was revised in July 2009 to strengthen protection of foreign trainees/technical interns, who thus become covered by the Labour Standards Act and the Industrial Accident Compensation Insurance Act from the first year of their training programme in Japan. The Committee notes the comments of the Japanese Trade Union Confederation (JTUC-RENGO) attached to the Government's report, maintaining that foreign workers engaged in illegal employment should also have their rights to industrial accident compensation respected on an equal footing with Japanese nationals. **The Committee invites the Government to reply to the JTUC-RENGO comments.** The Committee also notes extensive measures reported by the Government under the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), to ensure effective implementation of the revised Immigration Control Act and to increase coverage of foreign technical interns under the Industrial Accident Compensation Insurance Act.

## Kenya

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1964)**

The Committee notes that the Government is in the process of amending the Work Injury Benefits Act, 2007 (WIBA, 2007) so as to align it with the National Constitution of 2010 and the National Occupational Safety and Health Policy, as well as with the Convention, where necessary. The Committee also notes the annual report of the Directorate of Occupational Safety and Health Services provided by the Government in appendix to its report. According to this report, there are about 140,000 workplaces in the formal sector, while the total workforce in Kenya is estimated at 10.3 million in both formal and informal sectors. However, only a total of 6,023 accidents were reported during the year (249 of which were fatal). The report explains in this respect that whereas reporting of occupational accidents is a requirement under the

WIBA, 2007 reporting remained poor and in most cases not done within the stipulated time. In addition, non-availability of transport for field stations, inadequate financing and staffing to deal with increasing workload, together with the need to provide continuous technical training for occupational safety and health officers were identified as major challenges.

Taking note of the above, the Committee wishes to acknowledge the importance for the application of the Convention in practice of strengthening the human and material resources made available to the competent authorities in charge of monitoring the implementation of the national legislation in the area of employment injuries. The Committee considers in this respect that the work injury benefits scheme in Kenya which settles 768 compensation cases per year for a workforce of over 10 million does not appear to fulfil the objective of the Convention of providing compensation to all workers who suffer personal injury due to an industrial accident. ***The Committee therefore requests the Government to provide information on any measures taken or envisaged in this respect in the light of the main conclusions of the report of the Directorate of Occupational Safety and Health Services.***

## Republic of Korea

### ***Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)*** ***(ratification: 2001)***

*Article 1 of the Convention. Equality of treatment of migrant workers.* In its 2011 direct request, the Committee asked the Government to reply to the observations made by the Federation of Korean Trade Unions (FKTU) raising concern over the treatment of foreign workers in national law and practice and to indicate the sanctions imposed in case of breach of the national legislation concerning occupational accidents. In its reply received in September and November 2012, the Government states that foreign workers who are victims of employment injuries are entitled to the same compensation as national workers. Foreign workers, just like Korean workers, are allowed to choose between a lump sum and a pension in case of disability due to an industrial accident. Nonetheless, in accordance with sections 57 and 58 of the Industrial Accident Compensation Insurance Act (IACIA), if a foreign worker entitled to a pension leaves the Republic of Korea, his or her pension entitlement is terminated and converted into a lump sum compensation. This is done in order to avoid unjust receipt of insurance benefits as it is difficult to keep track of changes in the personal details of beneficiaries and determine whether they are still entitled to receive benefits. Since pensions and lump sum payments have the same legal value, paying one instead of the other benefit cannot be considered as being discriminatory.

In the new communication received 31 August 2012, the FKTU reiterates its concern that migrant workers, contrary to national workers, are forced under the IACIA to receive lump sum compensation upon returning to their respective countries. In practice, most migrant workers falling victims to industrial accidents have to leave Republic of Korea as it would be difficult for them to retain their right to stay in the country and impossible for those who are undocumented to live in the Republic of Korea based on disability pension alone.

The Committee observes that sections 57 and 58 of the IACIA do not guarantee equality of treatment between Korean workers and nationals of other Member States that have ratified the Convention; this equality should be granted without any condition as to residence. The Committee wishes to stress that the right to equal treatment cannot be conditioned by the administrative capacity of the Government to undertake the necessary checks with a view to preclude possible cases of abuse. On the contrary, to overcome such difficulties, *Article 4* of the Convention requires ratifying countries to afford each other mutual assistance with a view to facilitating the application of the execution of their respective laws and regulations on workmen's compensation. ***The Committee hopes that these explanations will help the Government to reconsider the treatment of migrant workers both under section 57 and 58 of IACIA with respect to their right to receive employment injury abroad. The Committee invites the Government to provide additional information on developments in this regard.***

*Part V of the report form. Supervision and enforcement of the application of the Convention in practice.* The Government states in its report that in cases where employers would fail to report occupational accidents, foreign workers may still claim compensation on their own or through medical institutions. Employers refusing to respond in an investigation, or to supply information, requested by the Korean Workers' Compensation and Welfare Service (COMWEL), are subject to a fine of up to 1 million Korea (South) won (KRW) (sections 117 and 129 of the IACIA). A fine of up to KRW10 million is imposed on employers who fail to report industrial accidents to the Minister of Employment and Labour, and violation of law by the company may be made public where the employer wilfully failed to report twice over a 3-year period (section 10 of the Occupational Safety and Health Act). The Government further refers to a Court ruling (Seoul Administrative Court, 11 April 2007; 2006 Guhap 26899) which considered it illegal to refuse giving a vocational training subsidy for rehabilitation after an industrial accident, only on the grounds that the person was a foreign national.

From its side, the FKTU reiterates that the IACIA does not contain any provision allowing for direct legal remedy against employers violating their duty to sign and seal application letters for workers' compensation. The legal sanctions referred to by the Government only represent administrative penalties and it is doubtful whether the current system efficiently prevents the employers from dissimulating industrial accidents. Although the nearly 500,000 foreign workers are considered to represent only 3.9 per cent of all the salaried employees, they are involved in about 6.9 per cent of the

total number of industrial accidents. This is significantly higher than the average occurrence rate for national workers and this figure does not take into account the unreported industrial accidents.

*Taking note of this information, the Committee requests the Government to review the regime of sanctions in order to ensure that employers accurately report industrial accidents and do not discriminate against foreign workers. To that end, the Committee would like the Government's next report to supply extensive information on the manner in which the national legislation is applied in practice by reference, inter alia, to the number of inspections undertaken and the amount of sanctions imposed.*

## Lebanon

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1977)

According to the information provided by the Government, the draft text to amend Legislative Decree No. 136 of 1983 establishing the legal framework for the compensation of employment injury is still awaiting validation by the Cabinet, before being submitted to Parliament for adoption. According to the Government, this draft text would give effect to *Article 2 of the Convention* by making the Legislative Decree applicable to apprentices. Furthermore, the draft of the new Labour Code includes the provisions of *Article 5* (payment of benefits in the form of periodical payments and guarantee of the proper utilization of lump sum payments) and the guarantees envisaged in *Article 11* in the event of the insolvency of the insurer. The requirements of *Article 8* of the Convention, where recourse is had to this provision, prevail over domestic law (review of the periodical payments in the event of a change in the state of the victim), although broader studies on the matter are necessary. No further information is provided with regard to *Article 6* (payment of compensation throughout the temporary contingency, and beyond the nine months envisaged in the Legislative Decree) and *Article 7* (additional compensation for injured persons requiring the constant help of another person). According to the information provided by the National Social Security Fund, annexed to the Government's report, in the event of an employment accident, compensation is provided as from the 11th day following the absence from work, contrary to *Article 6* of the Convention, which provides that compensation shall be paid no later than from the fifth day after the accident. The Committee *regrets* that, despite the comments that it has been making for many years, the measures necessary to bring the national legislation into conformity with the Convention are still at the draft stage. *The Committee trusts once again that the Government will make every effort to complete the current reforms with a view to guaranteeing all the protection afforded by the Convention to injured workers.*

## Malaysia

### Peninsular Malaysia

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1957)

#### **Follow-up to the conclusions of the Committee on the Application of Standards** (International Labour Conference, 100th Session, June 2011)

*Article 1(1) of the Convention. Equal treatment of foreign workers.* The Committee recalls that since 1 April 1993, the Malaysian social security system has contained inequalities of treatment that run counter to the provisions of the Convention. This inequality is due to national legislation that transferred foreign workers, employed in Malaysia for up to five years from the Employees' Social Security Scheme (ESS), which provided for periodical payments to victims of industrial accidents, to the Workmen's Compensation Scheme (WCS), which guaranteed only a lump sum payment of a significantly lower amount. On several occasions, the case of Malaysia has been discussed by the Conference Committee on the Application of Standards. Most recently, in June 2011, the Conference Committee urged the Government to take immediate steps in order to bring national law and practice into conformity with *Article 1* of the Convention, to respect the system of automatic reciprocity instituted by the Convention between the ratifying countries, and to avail itself of the technical assistance of the ILO to resolve administrative difficulties by concluding special arrangements with the labour-supplying countries under *Articles 1(2)* and *4* of the Convention. In August 2011, the Government indicated that a technical Committee within the Ministry of Human Resources including all stakeholders will pursue the formulation of the right mechanism and system to administer this issue considering the following three options: (i) extension of ESS coverage to foreign workers; (ii) creation of a special scheme for foreign workers under the ESS; and (iii) raising the level of the benefit provided by the WCS so as to be equivalent to that of the ESS benefit.

Replying to the Committee's 2011 Observation, the Government indicates in its latest report that it is currently in the midst of conducting the actuarial study on the three options under consideration and that upon completion of the study, continuous engagement with the stakeholders will be carried out before the most suitable option is determined. *The Committee hopes that the study under preparation will be finalized shortly, that the choices made by the Government in*

*consultation with all stakeholders will fully take into account the requirements of the Convention, that a new approach consistent with the Convention will be implemented expeditiously and that it will report thereon.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Sarawak

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1964)

*Article 1(1) of the Convention. Equal treatment of foreign workers. The Committee invites the Government to refer to the comments made under Peninsular Malaysia.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Mauritania

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1968)

*Governance of the social security system.* In a communication dated 22 August 2011, the General Confederation of Workers of Mauritania (CGTM) reports recurrent dysfunctions related to the operation of the social security system relating to the governance of the schemes that make up that system. The CGTM indicates that the Government has assumed the right to appoint the majority of the members of the deliberative body of the National Social Security Fund (CNSS), which enables it to determine the policy to be followed, without even leaving the workers' representatives a blocking minority. Frequently, in order to cover its needs, the State appropriates the assets of the pensions system and makes appointments to the posts of directors-general of the CNSS and of the National Sickness Insurance Fund (CNAM) as political favours to the detriment of the technical competence required to manage these institutions. The CGTM adds that the coverage of active workers is still very patchy due to the social fraud practised by most employers to avoid paying contributions through their practice of hiring labour through subsidiaries and only declaring a minority of their employees. The supervisory services of social insurance institutions are very limited and not operational in most cases. In view of all of the inadequacies indicated in its comments, the CGTM calls on the Government to undertake without delay a total reform of the CNSS, gathering together for that purpose the social partners as rapidly as possible, with a view to adapting it to the new realities of the development of the economic and social fabric and the new challenges that it has to face, with particular reference to ensuring its participatory management, protecting social security funds against bad management and the sustainable financing of social security.

*In view of the gravity of the allegations, the Committee requests the Government to reply in detail, in the light of Articles 71 and 72 of the Convention. Please also provide: copies of the latest annual reports on the management and activities of the CNSS; relevant extracts from the reports of the inspection and supervisory services relating to the issues referred to above; and a copy of the latest actuarial study of the social security system in Mauritania. The Government is also requested to indicate any measures adopted to promote exchanges of information between the fiscal authorities and social security institutions with a view to improving the management of the social security system and establishing a policy to combat social fraud, undeclared work and fraud in the payment of social security contributions. Finally, with regard to the calls made by the CGTM to open up a national debate on the future of social security, the Committee requests the Government to indicate in its next report the effect given to the calls made by the social partners for consultations.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1968)

*Article 5 of the Convention. Payment of benefits in the event of residence abroad.* The Committee recalls that, under the terms of section 66(2) of the Act of 3 February 1967, the payment of social security benefits is suspended where the beneficiary is not resident in Mauritania, except where reciprocity agreements or international agreements exist. Where the beneficiary originates from a State that has signed such an agreement with Mauritania, the physical presence of the beneficiary is not required for opening the entitlement to benefits or for setting up a bank transfer of the benefits. In practice, in the event of residence in any country which does not have an international agreement with Mauritania, benefits may still be paid but on condition that the beneficiary, whether a Mauritanian national or a foreigner, is physically present on Mauritanian territory at least once a year for the payment of benefits in order to establish the beneficiary's physical identity and ensure that any undue payments are avoided.

The Committee previously noted that, in view of the small number of bilateral social security agreements concluded by Mauritania, the requirement of physical presence in the country in order to receive benefits in cases where the beneficiary resides in a country which does not have an agreement with Mauritania is incompatible with *Article 5(1)* of the Convention, which guarantees the payment abroad of invalidity benefits, old-age benefits, survivors' benefits and

employment injury pensions. *Consequently, in order to make this provision of the Convention operational in practice and guarantee beneficiaries' rights in an effective manner, the Committee hopes that the Government will take the necessary steps to: (i) enable the identification and monitoring of beneficiaries through Mauritanian consulates abroad; and (ii) take steps to conclude bilateral agreements to facilitate the export of benefits to countries where the largest numbers of actual or potential beneficiaries are resident.*

## Mauritius

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1969)**

*Article 1 the Convention. Equality of treatment.* For many years, the Committee has been drawing the Government's attention to the need to amend 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 Compensation Act, 1931, which does not ensure the level of protection equivalent to that guaranteed under the national pension scheme in the event of employment injury. In its previous reports, the Government repeatedly indicated that a bill revising section 3 of the Order of 1978 was being prepared and would be introduced to the National Assembly as soon as it had been accepted by the State Law Office. In its last two reports, including the report received in September 2012, the Government makes no reference to the above bill. Instead, the Government's latest report indicates that the Ministry of Social Security, National Solidarity and Reform Institutions will have a working session with the officers of the State Law Office in September 2012 with a view to finalizing the bill for the merger of the Workmen's Compensation Act, 1931 and the National Pensions Act, 1976. *The Committee expresses the firm hope that the legislation resulting from the merger will fully comply with the principle of equal treatment between national and foreign residents guaranteed by the Convention without any condition as to residence.*

*[The Government is asked to reply in detail to the present comments in 2014.]*

## Myanmar

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1927)**

*Article 4 of the Convention. Situation of Myanmar migrant workers in Thailand.* The Committee has been following with concern for many years the situation of more than 2 million migrant workers in an irregular situation employed in Thailand. In reply to the issues raised previously by the Committee, the Government report, received in September 2012, indicates that five newly established Temporary Passport Issuance Centers have been opened in Thailand to issue documents to undocumented Myanmar workers. A labour attaché has also been assigned to Myanmar's Embassy to address labour affairs issues. The Myanmar and Thailand Governments have held 11 bilateral meetings aimed, inter alia, at: guaranteeing the implementation of the registration process for undocumented workers in Thailand; extending the validity of work permits pending the registration process; ensuring equal remuneration between the nationals of both countries; reducing visa costs; and facilitating the administrative collaboration between the two countries regarding residence requirements, including in respect of children and dependants.

The Committee notes with *interest* these developments, which are in line with the objective of *Article 4* of the Convention calling all ratifying Members to provide mutual assistance with a view to facilitating the execution of their respective laws and regulations on workmen's compensation. The Committee wishes to stress in this respect that active collaboration between Members party to the Convention with a view to solving the challenges related to its practical implementation constitutes the best way to address the problems and seek constructive and prompt solutions. The Committee hopes that the measures taken by the Government in cooperation with the Government of Thailand will help to improve the situation of Myanmar migrant workers in Thailand and their access to workmen's compensation insurance. *The Committee requests the Government to indicate further progress in this respect in its next report including statistics on the number of migrant workers in an irregular situation employed in Thailand who are receiving equal treatment under this Convention pursuant to the welcome developments described by the Government, as well as any problems still to be addressed.*

*Review of the national legislation on social security.* The Government indicates that the Social Security Bill amending the 1954 Social Security Act is currently before the Pyihtaungsu Hluttaw (Parliament) and is to be enacted in the very near future. Following the adoption of the new legislation, the Social Security Board will provide new benefits such as free medical care and cash benefits to all insured workers, both national and foreign (section 102 of the Bill). *The Committee requests the Government to supply a copy of the new Social Security Act once adopted.*

## Netherlands

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1962)

*Part VIII of the Convention (Maternity benefit).* The Committee notes that the Government's report received in August 2011 did not contain replies to specific questions raised in the previous direct request of 2007 concerning provision of maternity medical care to certain categories of protected women and the rules of cost sharing of such care. The Committee notes however that the 45th report of the Netherlands of 2012 on the European Code of Social Security states that maternity care is subjected to out-of-pocket payments per hour or per day, the amount of which depends on the place where the child is born. In the event the child is born in hospital, a higher out-of-pocket payment is applicable if there is no special medical indication. The contribution consists of two parts: a starting tariff of €16 per day and the difference between the day tariff the hospital charges and €112.50, which is charged to compensate for the costs of the maternity ward in the hospital. Only when the mother must be hospitalized due to a medical indication no out-of-pocket payment is applicable. In the case of child birth without medical indication, such as child birth at home or in an outpatient clinic, the mother must pay a contribution on behalf of herself and her child, which amounts to €4 per hour and is indexed yearly.

The Committee wishes to point out in this respect that *Articles 10(2) and 49* of the Convention prohibit sharing by the mother of the cost of the medical care provided in the case of pregnancy and child birth and their consequences. The types of such care specified in *Articles 10(1)(b) and 49(2)* shall be defined in the national legislation and provided to women protected under Part VIII of the Convention free of charge irrespective of the place where child birth takes place – in or outside hospital. The gratuity of this care cannot be subjected to the delivery of an additional special medical indication. *In light of these explanations, the Committee would like the Government to assess to what extent these requirements of the Convention are reflected in the current Dutch law and practice, specifying in particular whether all types of medical care mentioned in Article 49(2) and (3), including prenatal care, are covered by maternity care included in the standard health insurance package, what types of care are provided free of charge and what types require for this purpose a special medical indication, and in what form the latter should be delivered. Please calculate the maximum amount of out-of-pocket money the mother will normally be required to contribute when child birth takes place in hospital without a special medical indication, as well as outside hospital, at home or in an outpatient clinic.*

According to the Government's 44th report on the European Code of Social Security, maternity care is provided for mother and baby for up to ten days after childbirth; there is no cost sharing for maternity care with medical indication. *Please indicate whether, in the case of complications resulting from child birth, for example, maternity care with medical indication continues to be provided after the ten-day period without any cost sharing, in accordance with Article 52 of the Convention.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Niger

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1966)

For a number of years, the Committee has been noting the constant difficulties with which Niger is faced in trying to implement the provisions of the Convention. These may mainly be attributed to the fact that the national social security scheme was designed to cover the formal sector which, in the present state of the economy, accounts for less than 5 per cent of the economically active population in Niger. According to the *World Social Security Report 2010–11*, this country is continuing to experience adverse conditions from the standpoint of the low rate of coverage of its social security system, the poor quality of medical care (especially with respect to maternity), and the level of pensions – all this in the context of a low-life expectancy and a very high poverty rate among the population. In these circumstances, the Committee considers that the Convention's objective to guarantee that the greatest number of workers receive the benefits provided for under the Convention for each of the contingencies accepted requires the introduction of more efficient programmes aimed at the informal economy and most vulnerable categories of the population.

The Committee notes that, with a view to providing guidance to States whose social security systems are experiencing difficulties on account of national economic and social conditions and guaranteeing that everyone is entitled to social security, the International Labour Conference adopted the Social Protection Floors Recommendation, 2012 (No. 202), designed to establish all the necessary social security guarantees to prevent and alleviate poverty, vulnerability and social exclusion. In the case of Niger, the Committee notes that the constituent branches of the social security system, for which Niger accepted the obligations under the Convention (Parts V–VIII), provide the necessary institutional mechanisms for building national social protection floors and extending basic social security guarantees to other sections of the population. From this standpoint, the implementation of the Convention and Recommendation No. 202 should be carried out in parallel, by identifying and drawing upon synergies and complementarities. In this context, the Committee

notes with *interest* that the Decent Work Country Programme (DWCP) introduced in 2012 includes the drafting of a pilot programme aimed at institutionalizing a national social protection floor incorporating the informal sector. In order to attain this, the DWCP provides for, inter alia: integrating social protection policies within a national policy to create a national social protection floor; conducting a survey on social protection needs within the informal economy; and strengthening the capacities of actors in the area of social protection. *The Committee would be grateful if the Government could provide in its next report information on the progress made with respect to the implementation of the national social protection floor, specifying the way in which the new social protection mechanisms are harmonized with the existing social security system.*

## Pakistan

### **Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1927)**

The Committee notes the report of the Government as well as the comments sent by the Pakistan Workers' Federation in a communication dated 21 November 2011. For many years, the Committee and the Government have been maintaining a dialogue regarding the possibility of increasing the wage ceilings giving entitlement to protection in the event of occupational disease so as to ensure the protection afforded by the Convention to a greater number of workers. The Committee notes with *satisfaction* that, according to the Government report, the condition of wage ceilings was waived in 2007 as a result of an amendment to the Workmen's Compensation Act, 1923. *The Committee invites the Government to provide information in its next report of the number of persons covered by the Act as well as the number of occupational diseases registered and the amount of compensation paid.*

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

## Portugal

### **Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1994)**

With reference to its observation of 2007, the Committee notes the Government's report received in September 2011 accompanied by observations from the General Confederation of Portuguese Workers (CGTP-IN) and the General Union of Workers (UGT). The Committee also notes the annual reports from Portugal on the application of the European Code of Social Security for the 2008–12 period. According to these sources, even though the minimum standards established by the Convention continue to be applied in the country, recent developments in the national social security system in the context of the economic and financial crisis have featured austerity measures aimed at reducing social expenditure and resulting in greater precarity and poverty. The Committee recalls that the social security system would not fulfil its role if its benefits are incapable of keeping workers above the poverty threshold. *In view of the fact that poverty reduction is one of the main objectives of the Convention, the Committee requests the Government to send in its next report the most recent and comprehensive statistics on the dynamics of poverty in the country, including data on the number of beneficiaries and the minimum amounts of social benefits in comparison with the poverty threshold. The Government is also requested to demonstrate, on the basis of statistics for the period covered by the next report, that the readjustment of benefits for all protected persons has enabled the real value of benefits in relation to the cost of living to be maintained, in accordance with Article 65(10) of the Convention.*

## Sao Tome and Principe

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (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:

With reference to its previous comments, the Committee takes note of the information provided by the Government referring to the adoption of Framework Act No. 7 of 2004 on social protection. It notes with satisfaction that, in conformity with *Article 2, paragraph 1, of the Convention*, the above Act no longer prescribes a maximum age for purposes of affiliation to social security, including with respect to occupational risks. The Committee also notes with satisfaction that the affiliation of foreign workers to social security is not made conditional upon the existence of bilateral conventions on social security with their countries of origin.

*The Committee notes the Government's statement that the implementing regulations of the above Act are to be adopted soon and would be grateful to be kept informed of any developments in this respect and to receive copies of these regulations once adopted. It trusts that, on this occasion, the Government will duly take into account the provisions of the Convention as well as the questions it had raised previously with respect to the application of Articles 5 (benefits for permanent partial incapacity), 7 (supplementary benefit where the victim needs the constant help of another person), and 9 and 10 (surgical care and supply and normal renewal of such artificial limbs and surgical appliances as are recognized to be necessary) of the Convention.*



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

### **Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (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:

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. Payment of compensation in the form of periodical payments without limit of time.* 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.*

## **Suriname**

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1976)**

*Articles 4 and 5 of the Convention. Payment of benefits abroad.* The Committee notes the information provided by the Government, in its report received in September 2011, including the detailed statistical information regarding the nationality, number and occupations of the foreign workers employed in Suriname. The Committee notes with *regret* that, notwithstanding the repeated observations since the ratification of the Convention by Suriname, the Government has not been able to amend section 6(8) of the Industrial Accidents Act (Decree No. 145 of 1947) which restricts payment of employment injury pensions to beneficiaries resident abroad. The Committee further notes the renewed promises of the Government stating that the Ministry of Labour, Technological Development and Environment will implement the amendments suggested by the Committee in the context of the revision process of the Industrial Accidents Act and report progress in its next report. *The Committee trusts that this indeed will be the case this time and that the Government will fulfil its obligations under the Convention in good faith.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## **Thailand**

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1968)**

The Committee notes that the Government's report in response to its 2011 observation has not been received. It notes however that, in March 2012, the Government supplied information in reply to the issues raised by the State Enterprise Workers' Relations Confederation (SERC) in 2011 and that, in April 2012, a delegation composed of officials of the Social Security Office of Thailand was received at the ILO with a view to sharing knowledge and discussing questions concerning the implementation of the Convention. The Committee further notes that, on 18 September 2012, the SERC supplied updated information on the application of the Convention in Thailand which was transmitted to the

Government on 25 September 2012. The Committee notes from this information that the situation in law has changed due to the replacement of the Social Security Office (SSO) Circular No. RS.0711/W751 of 2001 by SSO Circular No. RN.0607/987 of 2012 following the adoption of a Cabinet resolution of 13 February 2012 on allowing migrant workers in a regular situation to access social security. In April 2012, the Office of Foreign Worker Administration reported that 642,865 workers from Myanmar, Cambodia and Lao People's Democratic Republic had completed the full nationality verification process and that another 95,929 had come in legally through the MOU import process. Furthermore, on 31 May 2012, the Illegal Alien Workers Management Committee (IAWMC) set up a Committee headed by the Permanent Secretary of the Ministry of Labour to investigate and make recommendations on the issues of migrant worker access to social security and work accident compensation benefits. With regard to the situation in practice, the SERC reports that the new circular does not change the previously existing situation. The official statistics on the number of migrant workers who have completed the nationality verification process continue to be conflicting and unreliable. According to the SERC, an estimated 1–2 million migrant workers from Myanmar remain undocumented and are not covered by employment injury insurance, while the Government continues to press ahead with plans to provide alternative compensation schemes to migrant workers distinct from those existing for Thai nationals without consultation with the interested parties.

*In view of the complexity of the situation and the developments which have taken place since it was last examined in its lengthy 2011 observation, the Committee urges the Government to provide detailed explanations on all issues raised in its previous and present comments. The Government is requested to supply a full report in 2013 containing information on how the new legal provisions have been implemented, the recommendations made by the Committee set up by the IAWMC, and statistics disaggregated by gender and age, on the number of migrant workers who have completed the nationality verification process, those still undergoing nationality verification, and on the number of migrant workers who became affiliated to the Workmen's Compensation Fund as a result.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Uganda

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1963)**

*Article 5 of the Convention. Periodical payments.* The Committee notes the Government's statement according to which the Committee's comments on the Workers' Compensation Act of 2000 and its application have been identified among the key items on the National Agenda for the Labour Advisory Board. *The Committee thus hopes that the Government will not fail to ensure that the Labour Advisory Board will consider the issues raised by the Committee in full knowledge of the case and will have before it clear recommendations from the Ministry of Gender, Labour and Social Development on the legislative and practical measures necessary to give full effect to Article 5 of the Convention, which provides for the payment of benefits in case of permanent incapacity or death of the breadwinner in the form of periodical payments without limit of time.*

*Application of the Convention in practice. Please provide, as required by Part V of the report form, information, including statistics, on the manner in which effect is given to the Convention in practice, specifying, in particular, the number of occupational accidents registered in Uganda as well as the amount of accident compensation benefits paid to the victims.*

## Uruguay

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1973)**

*Articles 13, 14 and 18 of the Convention (in conjunction with Article 19 or 20 as the case may be). Level of benefits. Article 21. Review of the rates of long-term cash benefits.* In spite of the Committee's repeated requests, the Government does not supply in its reports the statistical information required by the report form adopted by the Governing Body of the ILO on the level of benefits and their adjustment to changes in the cost of living. The lack of this information makes it impossible for the Committee to assess whether the rate of periodical payments guaranteed by national legislation meets the minimum standards established by the Convention in respect of cash benefits for partial incapacity (*Article 13*), for loss of earning capacity likely to be permanent (*Article 14*), and in the event of the death of the breadwinner (*Article 18*). *The Committee recalls that in case the Government is experiencing difficulties in compiling the information requested, it may avail itself of the technical assistance of the Office. The Committee is bound to conclude that the Government is not complying with its obligations under the Convention to provide the necessary information.*

*Uninsured employers.* Pursuant to section 8, second subsection, of Act No. 16074 on industrial accident and occupational disease insurance of 1989, compensation paid by the State Insurance Fund to victims of employment injury employed by uninsured employers is calculated on the basis of the national minimum wage. In its latest report, the Government supplies information on the number and type of benefits paid to such victims and the total amounts to be

recovered by the Fund with employers concerned. *While taking note of this information, the Committee would like the Government to calculate the replacement rate obtained in the case of an uninsured victim of employment injury having the same earnings and dependants as the standard beneficiary envisaged by Article 19 or 20 of the Convention. Please indicate the number of employers and of their employees exempted from compulsory insurance against employment injuries, and explain the reasons for such exemption.*

*Article 9. Abolition of the three-day waiting period. Article 11. Medical assistance at home.* Referring to its previous comments relating to the three-day waiting period for the payment of cash benefits, provided for in section 19(V) of Act No. 16074 of 1989, the Committee notes that the Government's report does not contain any information on envisaged gradual steps to abolish this waiting period and thus bring its legislation into line with *Article 9(3)* of the Convention. Furthermore, the Committee observes that section 11(2) of Act No. 16074 of 1989 which Act provides for the transfer of any worker who has suffered an occupational accident from the medical assistance centre to his home and vice versa, does not give effect to *Article 10(a)* of the Convention which refers to the provision of medical assistance at the home of the worker, if necessary. *The Committee is therefore bound to reiterate the hope that the Government will take the necessary measures to give full effect to the abovementioned provisions of the Convention.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 12** (Angola, Antigua and Barbuda, Comoros, Democratic Republic of the Congo, Gabon, Peru, Rwanda); **Convention No. 17** (Angola, Argentina, Armenia, Burundi, Cape Verde, Central African Republic, Cuba, Djibouti, Greece, Kenya, Kyrgyzstan, Mexico, Portugal, Rwanda, Slovakia, Syrian Arab Republic, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Jersey, Zambia); **Convention No. 18** (Angola, Armenia, Benin, Djibouti, Pakistan, Portugal, Tunisia, Zambia); **Convention No. 19** (Angola, Plurinational State of Bolivia, Burkina Faso, Cape Verde, Central African Republic, Democratic Republic of the Congo, Dominica, Dominican Republic, Gabon, Greece, Guatemala, Guyana, Indonesia, Iraq, Kenya, Lebanon, Malawi, Mali, Rwanda, Saint Lucia, Sao Tome and Principe, Serbia, Sudan, Trinidad and Tobago, United Kingdom: British Virgin Islands, United Kingdom: Guernsey, Yemen); **Convention No. 24** (Algeria); **Convention No. 38** (Djibouti); **Convention No. 42** (Burundi, France: New Caledonia, Italy, Slovakia, Turkey, United Kingdom, United Kingdom: Guernsey); **Convention No. 44** (Algeria, Bulgaria, France: New Caledonia); **Convention No. 102** (Barbados, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Denmark, Ireland, Mauritania, Montenegro, Netherlands, Poland, Portugal, Romania, Serbia, Spain, United Kingdom, United Kingdom: Isle of Man, Uruguay); **Convention No. 118** (Plurinational State of Bolivia, Central African Republic, Democratic Republic of the Congo, Denmark, Guatemala, Guinea, Iraq, Israel, Madagascar, Rwanda, Uruguay); **Convention No. 121** (Belgium, Bosnia and Herzegovina, Chile, Finland, Montenegro, Netherlands: Aruba, Serbia, Slovenia); **Convention No. 128** (Austria, Barbados, Ecuador, Finland, Netherlands, Uruguay); **Convention No. 130** (Ecuador, Netherlands, Uruguay); **Convention No. 168** (Switzerland).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 12** (Bosnia and Herzegovina, Serbia); **Convention No. 17** (Malaysia: Peninsular Malaysia, Netherlands: Aruba, United Kingdom: Guernsey); **Convention No. 19** (Bangladesh, Bosnia and Herzegovina, Jamaica, Mauritius, Spain); **Convention No. 24** (Poland); **Convention No. 25** (Netherlands: Aruba); **Convention No. 42** (France, New Zealand); **Convention No. 102** (Turkey); **Convention No. 118** (Finland); **Convention No. 121** (Japan); **Convention No. 130** (Finland, Luxembourg); **Convention No. 157** (Philippines, Sweden).



## Maternity protection

### Guatemala

#### **Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1989)**

*Article 1 of the Convention. Coverage.* The Committee notes with *interest* the extension of the geographical coverage of the sickness, maternity and accident programmes of the Guatemalan Social Security Institute (IGSS) to the departments of Petén, Santa Rosa and El Progreso. The inclusion of the three departments in 2011 completed the process of the extension of coverage to the whole of the national territory. While taking due note of the statistical data provided by the Government in its report, the Committee observes that such data still lack the level of detail required to assess the number and categories of women who are effectively covered by the scheme (in relation to the total number of employed women in the various departments of the country). The Committee therefore wishes to emphasize the importance of statistical tools in developing a baseline with a view to the extension of maternity protection to all the categories of women workers protected by the Convention. ***The Committee therefore requests the Government to indicate the progress achieved in developing the new statistical system referred to in the report provided in 2008.***

*Article 3(2) and (3). Compulsory period of maternity leave.* The Committee notes the Government's reply in its report to its request made to legally guarantee the compulsory period of post-natal leave of at least six weeks for all women covered by the Convention and to prohibit the employment of women during their post-natal leave. The Government indicates that the period envisaged in the IGSS regulations exceeds six weeks, as set out in sections 114 and 34, as amended, of Decisions Nos 466 and 468 of the Administrative Board of the IGSS, respectively. The Government adds that in the event of the return to work of a woman before the employer has received notification of the termination of incapacity, the employer is required to notify the Institute within three days; furthermore, in the event that a woman is employed during the post-natal period, the employer shall cover the costs arising out of the unwarranted payment of the allowance, without prejudice to being liable to the penalties envisaged in the Labour Code. The Committee recalls that the compulsory nature of the post-natal leave and the minimum period of leave are protective measures intended to prevent women from resuming work before the end of the six-week period as a result of undue pressure or with a view to material advantage to the detriment of their health. ***The Committee therefore once again urges the Government to take the necessary measures to guarantee the compulsory nature of the period of post-natal leave, in accordance with the above provisions of the Convention.***

*Article 4(1). Suspension of benefits.* The Committee notes the Government's indications concerning the absence of cases in which benefits have been suspended on the grounds of the clearly anti-social behaviour of the beneficiary and the fact that, were such a case to arise, benefits would be provided once again when the reasons for their suspension had ceased. The Committee observes that on various occasions the Government has referred to the non-application of the respective rules, although this has not resulted in the repeal of sections 48(c), 149(c) and 71(c) of Decisions Nos 410, 466 and 468 of the Administrative Board of the IGSS, respectively. This reason for the suspension of benefits is not in accordance with the provisions of the Convention as it amounts to an unjustified limitation on entitlement to medical and cash benefits. ***The Committee once again requests the Government to take the necessary measures to bring the above legislation into conformity with the provisions of the Convention.***

*Article 4(4), (5) and (8). Employer liability.* The Committee notes that, despite the fact that it has been the subject of reiterated requests since 1993, the Government has omitted to address the issue of possible reforms of the national legislation. The Committee recalls the importance of a provision establishing that women who do not fulfil the required conditions to receive social security benefits, are to be granted adequate benefits out of social assistance funds (subject to the means test required for such assistance), and not by the employer, with a view to preventing discrimination in the recruitment of women who are of child-bearing age. ***The Committee hopes that the Government will take the necessary measures in the near future to bring the national legislation into 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. 3 (Guinea)**; **Convention No. 103 (Equatorial Guinea)**.



## Social policy

### 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 must therefore repeat its previous observation which read as follows:

*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(I) of the Convention, "all policies shall be primarily directed to the well-being and development of the population".*

*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. 82** (United Kingdom: British Virgin Islands); **Convention No. 117** (Guatemala, Zambia).





## Migrant workers

### Barbados

#### **Migration for Employment Convention (Revised), 1949 (No. 97)** (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:

*Articles 7 and 9 of the Convention. Free services rendered by public employment agencies and transfer of remittances.* The Committee notes the communication from the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB), dated 19 June 2008, in which it expresses concerns relating to the Farm Labour Programme between Barbados and Canada, which still employs thousands of Barbadians. According to the CTUSAB, 25 per cent of the workers' earnings are being remitted to the Barbados Government directly from Canada, 5 per cent of which is retained by the Government for administrative expenses. The CTUSAB also maintains that the costs of going to Canada, as well as pension contributions for both Barbados and Canada and medical contributions in Canada are immediately deducted from their pay, which is creating hardship for the workers concerned. In the view of the CTUSAB, the system must be reviewed so as not to disadvantage the workers under the programme.

The Committee notes that the Government has not replied to the comments from the CTUSAB. The Committee recalls that under *Article 9* of the Convention, ratifying States undertake to permit the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire. Requiring migrant workers to remit 25 per cent of their earnings to the Government would, in the view of the Committee, be contrary to the spirit of *Article 9* of the Convention. Moreover, the Committee recalls that *Article 7(2)* of the Convention provides that services rendered by public employment services in connection with the recruitment, introduction and placing of migrants for employment are to be provided free of charge. The Committee draws the attention of the Government to the fact that charging workers for purely administrative costs of recruitment, introduction and placement is prohibited under the Convention (General Survey of 1999 on migrant workers, paragraph 170). *The Committee urges the Government:*

- (i) *to undertake a review of the Farm Labour Programme between Barbados and Canada, in cooperation with the workers' and employers' organizations;*
- (ii) *to explain the reasons for requiring migrant workers under the programme to remit 25 per cent to the Government, including 5 per cent for administrative costs; and*
- (iii) *to ensure that purely administrative costs of recruitment, introduction and placement are not borne by the workers recruited under the programme, and that migrants for employment are permitted to transfer their earnings or such part of their earnings and savings as they desire.*

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

#### **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 previously raised issues relating to the difficulties encountered by migrant workers in claiming their rights arising out of past employment, such as remuneration and social security when their contracts of employment were declared null and void. The Committee notes the Government's general reply that the labour legislation is rather generous in this regard and that a number of measures have been taken to ensure respect for migrant workers' rights. The Government also states that according to statistics the number of foreign workers who are illegally employed is very low and that there is no information on the number and nature of the complaints submitted to the labour inspection services by migrant workers in an irregular situation. The Committee draws the Government's attention to the fact that for the right to equal treatment to be enjoyed in practice, it is important that effective mechanisms are in place to address situations of non-respect of this right, including accessible and effective complaints procedures for migrant workers. The Committee does not consider the low number of complaints to be an indication that such effective mechanisms exist. *Recalling the Government's previous indication that recourse to the labour inspectorate is the only way for workers whose contract has been declared null and void to claim their rights, the Committee urges the Government to examine any obstacles faced by those migrant workers to submit claims to the labour inspectorate in relation to rights derived from past employment, and to provide information on the progress made in this regard. The Committee also, once again, urges the Government to take the necessary legislative measures to ensure 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, social security and other benefits, in accordance with Article 9(1) and (2) of the Convention. Please provide statistics on the number of migrant workers in an irregular situation, including those migrant workers whose contracts have been declared null and void.*

*Article 10. Exercise of trade union rights.* The Committee recalls that section 10(1) and (2) of the Labour Code provides 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. The Committee had requested clarification from the Government regarding whether this requirement also applied to foreign nationals wishing to join a trade union. The Committee notes the Government's reply that the draft law on trade unions has taken this issue into account. ***Recalling the Government's previous statement that membership in a trade union is free for both nationals and migrant workers and that the issue would be addressed in the context of the revision of the Labour Code, the Committee requests the Government to ensure that any future legislation 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, and to provide information on any developments in this regard.***

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

## China

### Hong Kong Special Administrative Region

#### ***Migration for Employment Convention (Revised), 1949 (No. 97)*** ***(notification: 1997)***

The Committee notes the Government's report in reply to the request made by the Conference Committee on the Application of Standards in June 2012. It also notes the joint observations, dated 31 August 2012, of the Hong Kong Confederation of Trade Unions (HKCTU) and the Hong Kong Federation of Asian Domestic Workers Union (FADWU), which were sent to the Government for its comments.

*Statistics.* The Committee notes from the Government's report that as of 31 May 2012, there were in the Hong Kong Special Administrative Region (SAR) 58,974 foreign professionals, 307,151 foreign domestic workers (4,771 men and 302,380 women), and 3,452 immigrant workers entering under the Supplementary Labour Scheme (SLS) (largely from mainland China). As of 31 May 2012, 2,216 applicants also entered under the Quality Migrant Admission Scheme with 1,713 applicants from mainland China and other applicants coming mainly from Asia Pacific, Europe and North America. The large majority of the domestic workers are from Indonesia (143 men and 151,852 women) and the Philippines (3,835 men and 144,096 women). Other foreign domestic workers are from India (460 men and 1,932 women), Sri Lanka (136 men and 819 women) and Thailand (38 men and 3,155 women); 685 domestic workers (159 men and 526 women) originate from "other countries". The Committee notes from the communication of HKCTU and FADWU that migrant domestic workers also come from Nepal. ***The Committee requests the Government to continue to provide statistical data, disaggregated by sex and country of origin, as well as sector of employment, on the number of migrant workers in Hong Kong SAR.***

*Article 2 of the Convention. Information and services for migrant workers.* The Committee previously noted the Government's efforts to provide migrant workers access free of charge to all of the services provided by the Government, including a telephone inquiry service, consultation and conciliation services, and interpretation services. Information about rights and benefits under the applicable legislation and the individual employment contract as well as on the relevant complaints mechanisms is also being provided free of charge through various media, including publications and brochures in several languages. The Committee notes that HKCTU and FADWU point to some difficulties regarding the provision of these services to migrant workers, including the functioning of the telephone inquiry service, and the need for effective measures to ensure that the contents of the standard employment contract are understood fully by all migrant workers. They also recommend that interpretation services be provided when migrant workers want to file a complaint with the Labour Department. ***The Committee asks the Government to indicate the measures taken to ensure that migrant workers are able to benefit effectively from the services, including interpretation services, and information provided to them, and whether any additional steps are being taken to ensure that migrant workers have a clear understanding of the contents of their employment contract.***

*Article 6(1)(a)(i). Equality of treatment of foreign domestic workers with respect to remuneration and conditions of work.* For a number of years, the Committee has been following up on the impact of measures taken by the Government to increase the monthly minimum allowable wage (MAW) of foreign domestic workers, after its reduction by HK\$400 in 2002, and the suspension until 31 July 2013 of the obligation for employers of all immigrant workers to pay an Employee Retraining Levy (ERL) of HK\$400. The Committee notes from the Government's report that from 1 June 2010 to 31 May 2012, 5 per cent (342 cases) of the total number of claims from foreign domestic workers lodged with the Labour Department involved underpayment of wages; of these, 150 cases were settled through conciliation while the remaining 192 cases were referred to the Labour Tribunal or the Minor Employment Claims Adjudication Board for adjudication. ***Noting that the suspension of the ERL expires in July 2013, the Committee asks the Government to provide information on any measures taken or envisaged to ensure that the ERL is not having a disproportionate impact on the wages of foreign domestic workers, once the ERL again becomes operational.***

*Minimum wages.* The Committee notes that HKCTU and FADWU are of the view that when taking into consideration the rate of inflation in Hong Kong SAR, the monthly MAW of migrant domestic workers has increased only very little compared to the level in 2002 (HK\$3,670), before the ERL was introduced. The Committee notes that for employment contracts signed by parties starting 20 September 2012, an increased monthly MAW of HK\$3,920 and food allowance of HK\$875 shall apply. Workers with contracts before that date will be entitled only to the previous monthly MAW and food allowance. The Committee recalls its previous observation in which it noted that section 7(2) of the Minimum Wage Ordinance (MWO) No. 15 of 2010 excluded in practice all foreign domestic workers due to the mandatory live-in requirement (paragraph 3 of the standard employment contract). The Committee also noted that the hourly statutory minimum wage under the MWO was set at HK\$28. The Committee notes the Government's reply that the remuneration package of foreign domestic workers includes, beyond the MAW, a range of in-kind benefits which are not available to non-live-in workers, including free accommodation and a food allowance. The Committee notes however that HKCTU and FADWU refer to alleged reports of sub-standard accommodation and express concerns at the lack of a mechanism in place to measure or calculate the costs of accommodation. The Committee recalls that one of the reasons given at the time by the Legislative Council to exclude live-in domestic workers from the MWO was their distinctive working patterns (around-the-clock work) and the difficulty in keeping a record of hours of work and calculating wages accordingly. The Committee takes due note of the Government's explanation that the remuneration package of domestic workers includes additional benefits in kind but draws the Government's attention to the fact that while the treatment applied by the State to migrant workers does not have to be identical to that enjoyed by nationals, it should nonetheless be equivalent in its effects (General Survey on migrant workers, 1999, paragraph 371). Bearing in mind the particular working conditions of foreign domestic workers, who constitute the overwhelming majority of the migrant workers in Hong Kong SAR, and who are primarily women, the Committee considers that an in-depth review of the working conditions and remuneration of these workers is required so as to determine whether or not in practice, female foreign domestic workers are subject to discrimination based on sex or nationality and to less favourable treatment than that applied to nationals and other categories of migrant workers with regard to remuneration. ***The Committee therefore requests the Government to take steps to examine, in consultation with workers' and employers' organizations, existing inequalities in the remuneration package between local and foreign workers arising from the applicable laws and regulations concerning foreign domestic workers so as to verify that no less favourable treatment is being applied to foreign domestic workers than to nationals, and to report on the results achieved. The Committee also requests the Government to clarify the reasons for applying the new MAW and food allowance only to contracts signed as of 20 September 2012, and to clarify how the cost of accommodation for live-in workers is being calculated.***

*Conditions of work.* The Committee previously noted that one of the underlying reasons to exclude live-in domestic workers from the scope of the MWO included the fundamental erosion of the policy on foreign domestic workers if standard working hours would be prescribed and the live-in requirement removed. The Committee recalls the concerns expressed by the International Trade Union Confederation (ITUC) regarding the particular vulnerability of certain groups of foreign domestic workers, especially those of Indonesian and Nepali origin, to violations of their statutory rights and employment contracts, including denial of rest days, excessive working hours (average of 16 hours a day), and sexual and physical abuse. The Committee notes that the Government's report merely states that during the reporting period, 128 reports of claims of foreign domestic workers regarding abuse by employers including rape, indecent assault as well as wounding and serious assault were handled by the police according to the laws of Hong Kong, without providing further information regarding the outcome of these claims for both domestic workers and employers. The Committee further notes the observations of HKCTU and FADWU regarding alleged abuses relating to conditions of work of immigrant workers who entered Hong Kong SAR under the Supplementary Labour Scheme to the extent that they fall within the scope of the definition of migrant for employment set out in *Article 11* of the Convention. ***The Committee requests the Government to indicate the measures taken or envisaged to ensure the effective monitoring by the competent authorities of the working conditions of foreign domestic workers, and whether any consideration has been given to examining the working patterns of foreign domestic workers with a view to ensuring that no less favourable treatment is applied to them as compared to nationals and other migrant workers with respect to conditions of work.***

*Article 6(1)(d) and Parts III and IV of the report form. Enforcement.* The Committee notes that from 1 June 2010 to 31 May 2012 the Labour Department handled 6,726 claims from foreign domestic workers concerning alleged breaches of the Employment Ordinance or the terms of the Standard Employment Contract by their employers; of the cases that could not be settled by the Labour Department's conciliation efforts, 1,792 were subsequently referred to the Labour Tribunal or the Minor Employment Claims Adjudication Board for adjudication. The Labour Department also issued 236 summonses involving underpayment of wages or other breaches of the Employment Ordinance by employers of migrant workers (including 233 summonses against employers of foreign domestic workers). During the same period, the Immigration Department prosecuted 61 employers for aiding and abetting foreign domestic workers to breach their conditions of stay by taking up illegal employment. The Committee had previously noted concerns that the rule requiring foreign domestic workers to leave Hong Kong SAR within two weeks of the expiration or premature termination of their employment contract ("two-week rule") drove workers to remain in or to access new employment in abusive conditions. The Committee notes that for the period under review, 56,402 applications of foreign domestic workers to change workplace were approved, while 372 cases were refused, largely due to the applicants' failure to meet the criteria for change of employment. During the same period, all 10,050 applications for extension of stay from foreign domestic

workers to pursue civil or criminal proceedings were approved. In this regard, the Committee notes that the HKCTU and FADWU reiterate concerns regarding the length of the proceedings which, combined with the fear of deportation, resulted in many domestic workers being discouraged from filing a complaint; the prohibition of foreign domestic workers taking up employment during the remaining time of their stay also resulted in workers withdrawing complaints or accepting lower settlements due to the high costs involved. The Committee notes the Government's statement that all complaints lodged will be promptly investigated and prosecution instituted when there is sufficient evidence and the foreign domestic worker is willing to act as a prosecution witness. ***The Committee requests the Government to examine the difficulties encountered by foreign domestic workers in processing their claims on an equal footing with nationals in accordance with Article 6(1)(d) of the Convention, and to provide information on the results achieved. The Committee also asks the Government to provide information on any additional measures taken or envisaged to further strengthen the inspection and enforcement of the rights of foreign domestic workers under the Employment Ordinance and the Standard Employment Contract, and to ensure that migrant workers who have applied for an extension of their stay due to legal proceedings have access to effective and speedy dispute resolution so as to reduce costs incurred during the period that the legal proceedings are pending. Please continue to provide information on the number of applications for extension of stay beyond the permissible two weeks due to legal proceedings and the number of applications to change employer, and the reasons for any refusals by the Immigration Department. The Committee also asks the Government to continue to provide information on the number and nature of claims, including underpayment claims, submitted by foreign domestic workers and other migrant workers under the Supplementary Labour Scheme to the Labour Department, the Labour Tribunal and the Minor Employment Claims Adjudication Board, and their outcome for both workers and employers, relating to violations of the relevant laws and regulations and the Standard Employment Contract.***

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 2014.]*

## France

### **Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1954)**

The Committee recalls the observations of the General Confederation of Labour (CGT), dated 30 August 2011, and the Government's reply thereto received 20 December 2011. It also notes the Government's reports received 5 December 2011 and 8 August 2012, and the observations of the CGT, dated 31 August 2012, which were sent to the Government for its comments and in which the CGT restates its concerns with respect to *Articles 3, 6 and 7 of the Convention*.

*Article 3 of the Convention. Misleading propaganda regarding immigration and migrant workers.* The Committee recalls that under the terms of *Article 3*, any State for which the Convention is in force undertakes to take all appropriate steps against misleading propaganda relating to emigration and immigration. Such measures should also aim to address stereotypes of migrant workers such as being more susceptible to crime, violence and diseases or regarding their educational and employment abilities (General Survey on migrant workers, 1999, paragraph 217). The Committee notes that the CGT refers to the existing prejudices and stigmatization of the migrant population in France, including discriminatory stereotypes regarding people belonging to the Roma community, and highlights the need for greater efforts to address such prejudices and the dissemination of false information regarding immigrant workers. In this context, the CGT draws particular attention to government policies regarding the dismantling of Roma camps and the expulsion of Roma people, in particular those originating from Bulgaria and Romania, which in its view fail to meet the Government's obligations under the Convention. The Committee notes the Government's general reply that the measures aimed at addressing misleading propaganda include legislative and practical measures to combat racism and xenophobia and measures against trafficking of women. Regarding the expulsion of Roma people, the Government details the measures under the relevant legislation relating to the conditions under which nationals from the European Union (EU) may reside in France or may be removed (section L.121-1 of the Code of Entry and Stay of Foreigners and the Right to Asylum (CESEDA)) and the accompanying measures to assist voluntary returnees, mostly nationals from Romania, to reintegrate in their country of origin. The Committee wishes to draw the Government's attention to its comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), noting that the dismantling of the Roma camps is continuing without alternative solutions being sought for housing, thereby reinforcing the marginalization, stigmatization and prejudices of which members of the Roma community are already victims, and creating obstacles to their social integration. ***The Committee therefore requests the Government to provide full information on the measures taken, in cooperation with the social partners and other relevant stakeholders where appropriate, to prevent and combat prejudices regarding immigration and stigmatization and stereotyping of migrant workers, including the Roma population, in an effective manner, and to provide detailed information on the results achieved.***

*Article 6. Equality of treatment.* The Committee previously noted the developments in relation to France's immigration law and policy, in particular Act No. 2006-911 of 2006 on immigration and integration and Act No. 2007-1631 of 2007 concerning immigration control, integration and asylum, the new measures taken to facilitate the reception and integration of certain categories of migrants for employment, the measures to improve the housing conditions of the migrant population, and the bilateral agreements and arrangements regarding youth mobility and

organizing regular migration and promoting co-development and cooperation. At the same time, the Committee observed that major problems appeared to exist with respect to the integration of migrant workers, including negative perceptions of the immigrant population, widespread discrimination and poor housing conditions. The Committee notes that the CGT raises concerns at the increased stringency of the legislative and normative framework concerning immigration and migrant workers, and its main focus on highly qualified occupations whereas migrant workers already in the territory are primarily employed in low-wage sectors with difficult working conditions (notably, cleaning, textile, restaurant, security and construction). According to the CGT, the measures tightening the rules on the delivery and renewal of residence permits and reducing regular immigration opportunities also encourage irregular migration and drive migrant workers and their families into abusive situations.

The Committee notes the Government's reply that new policy orientations regarding labour migration have been defined in order to take into account the impact of the economic crisis on the labour market, and to adopt a qualitative and selective approach giving priority to the integration of jobseekers already in the labour market regardless of nationality. The Committee notes the policies to attract highly skilled foreign workers, including Act No. 2011-672 of 16 June 2011 concerning immigration, integration and nationality introducing the "European Union (EU) Blue Card" for highly qualified nationals from countries outside the EU ("third country nationals"). The new legislation also simplifies the procedures regarding the removal of foreigners and amends several provisions concerning the entry and residence of foreigners. According to the Government, the objective of the approach is to ensure the full application of the rules regarding work permits while at the same time ensuring equality of treatment regarding conditions of work and protecting workers from being exploited. The Government states that foreign workers and members of their families lawfully residing in France enjoy equality of treatment with nationals with respect to conditions of work, remuneration, trade union rights and social protection. The Government also refers to the Charter for Diversity in Enterprises, launched in 2004 with the support of the social partners, which the Committee addressed in the context of Convention No. 111. Regarding the situation of Roma of foreign origin, the Government indicates that the Roma are considered as nationals of the country of which they have the nationality and that the transitional arrangements requiring nationals from Bulgaria and Romania – from where most of the Roma population living in France originate – to have a work permit, apply until 2014. The Committee notes that pursuant to the Decree of 1 October 2012, the list of occupations for which Bulgarian and Romanian nationals are eligible to apply has been enlarged from 150 to 291 occupations. While taking due note of the Government's statement that the reception and integration of migrant workers, in particular at the initial stage of immigration, is a priority in its immigration policy and of the importance attached to the principle of equality of treatment between migrant workers lawfully in the country and nationals, the Committee recalls that the provisions of *Article 6* of the Convention not only envisage equal treatment in law, but also in practice. Noting the effect of stereotypes and prejudices regarding the immigrant population on the effective enjoyment in practice of equality of treatment without discrimination as to race, sex, religion and nationality in respect of the matters referred to in *Article 6(1)(a) to (d)* of the Convention, the Committee also draws the Government's attention to its comments on Convention No. 111. ***The Committee requests the Government to indicate in detail the relevant legal provisions applying no less favourable treatment to migrant workers than that which applies to nationals, with respect to the matters enumerated in Article 6(1)(a) to (d) of the Convention, indicating any differences that may exist between the various categories of immigrant workers. The Government is also requested to provide information on the measures taken to ensure that the principle of equal treatment regarding these matters is applied effectively in practice, including specific measures regarding women migrants. Please include information on any complaints brought by migrant workers to the competent authorities, including the Rights Ombud and the courts or any other competent body to ensure the application of the national legislation relevant to the Convention. Furthermore, the Committee encourages the Government to assess the impact of its migration and integration policy on immigrant workers and their families, distinguishing between the different types of permits authorizing employment, with regard to Articles 3 and 6 of the Convention, and asks the Government to provide information in this regard.***

*Article 6(1)(a)(iii) and (d). Accommodation and legal proceedings.* The Committee notes with *interest* the decision of the Supreme Administrative Court of 11 April 2012 (*Conseil d'Etat Ass 11 April 2012, GISTI et FAPIL, No. 322326*) repealing section 1 of Decree No. 2008-908 of 8 September 2008 inserting section L300-2 in the Code of Construction and Housing which imposes the condition on certain categories of foreigners that they should have resided for an uninterrupted period of two years in France to benefit from the enforceable right to decent housing. Considering that the provisions of *Article 6(1)(a)(iii) and (d)* of the Convention could be directly invoked by individuals, the Supreme Administrative Court ruled that the Decree was not in conformity with the Convention in submitting the enforceable right to housing of certain migrant workers to a condition of two years of uninterrupted residence in France, a condition which is not applied to nationals; and, by excluding from its scope of application certain residence permits, such as those delivered to persons who could be migrants for employment within the meaning of *Article 11(1)* of the Convention, such as temporary workers and employees on assignment. The Court also considered that the Decree ignored the equality principle by excluding these residence permit holders from the enforceable right to housing. The Committee further notes the Government's statement that the housing policy, which addresses all population groups regardless of nationality, concerns a significant number of foreigners due to overrepresentation of non-nationals among the population facing difficulties in gaining access to housing. ***Recalling the problems relating to housing conditions of the immigrant population previously noted by the Committee, and the Government's indication regarding the difficulty in proving that***

*discrimination with respect to housing has occurred, the Committee requests the Government to provide detailed information on the various measures taken or envisaged to improve the housing conditions of migrant workers so as to ensure that in practice, migrant workers are not treated less favourably than nationals with regard to access to accommodation, and to provide information on the results achieved. Please also include information on any measures taken to address the difficulties encountered in proving that discrimination with respect to housing has occurred and on the results achieved.*

*Articles 2 and 7(2). Free services.* The Committee notes the concerns expressed by the CGT at the high fees for migrant workers due to the medical examination required upon entry into France and the fees charged by the National Agency for Foreigners and Integration (OFII) to foreign workers for the delivery or renewal of the residence title authorizing employment. The Committee notes the Government's reply that administrative costs relating to the recruitment, introduction and placement of foreign workers and the costs for the medical examination are charged to the employer, and that the only costs charged to the migrant worker are the taxes due to OFII for the issuing or the renewal of the residence permit authorizing employment. The Committee notes Circular No. NOR IOCL1201043C of 12 January 2012 fixing the taxes required from the employer for the recruitment of a foreign worker, and from the foreign worker for the delivery or renewal of their residence permit authorizing employment. Furthermore, the Committee notes that OFII is the responsible public service for the reception of newly arriving foreigners with a long-term residence visa authorizing employment as a wage earner, and participates in the integration process of these foreigners. It is also the only "one-stop shop" for the introduction of young professionals, newly arriving "employees on assignment" and foreigners with temporary residence permits for "competencies and talents". With regard to temporary residence permits for wage earners and temporary workers, the OFII assists the enterprise with the introduction procedure, after the contract of employment has been approved by the Service for Foreign Labour. The Committee recalls that *Article 7(2)* of the Convention and *Article 4 of Annex I* require that the services rendered by the public employment service in connection with the recruitment, introduction or placement of migrants for employment are to be rendered free of charge. *Article 2(b) of Annex I* defines introduction as any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of *Article 2(a) of Annex I*. Noting that it is the long-term residence visa that authorizes the foreigner to work, and taking into account OFII's functions regarding the introduction of third country nationals who are wage earners and the taxes due by the foreign worker to OFII for the delivery or the renewal of a residence permit, the Committee notes that it is unclear whether the services provided by OFII in connection with the introduction of foreign workers are services within the meaning of *Article 7(2)* of the Convention and *Article 4 of Annex I* which should be rendered free of charge. ***In these circumstances, the Committee requests the Government to provide information on the specific services provided by OFII regarding the recruitment, introduction and placement of migrant workers, and any costs charged to the migrant workers who benefit from these services, and to indicate which services are covered by the fees related to the issuing or renewal of the residence permit authorizing employment.***

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 2014.]*

## Israel

### ***Migration for Employment Convention (Revised), 1949 (No. 97)*** ***(ratification: 1953)***

*Statistics on migrant workers.* The Committee notes from the Government's report that in 2011, 5,470 permits were issued to migrant workers in the construction sector (with 83 per cent of the workers coming from China and 6 per cent from the Republic of Moldova); 24,582 permits to migrant workers in the agriculture sector (with 95 per cent of the workers coming from Thailand); and 45,886 permits to migrant workers in the nursing care sector (with 39 per cent of the workers coming from the Philippines, 16 per cent from the Republic of Moldova, 14 per cent from India and 13 per cent from Nepal). There are also skilled migrant workers in the industrial and restaurant sectors and foreign specialists. ***The Committee requests the Government to continue to provide statistical data, disaggregated by sex, nationality and sector of employment, on the number of migrant workers in Israel.***

*Article 6 of the Convention. Equality of treatment (foreign caregivers).* The Committee recalls its previous observation raising concerns that the implementation of the Entry into Israel Law (Amendment No. 21) of 16 May 2011 – making it possible to restrict the transfer of foreign workers between employers by issuing work permits that are limited to certain geographical regions or to certain sub-branches of the caregiving sector – could result in reinstating the "restrictive employment relationship" of migrant workers with their employers, previously criticized by the High Court of Justice in 2006. The Committee also recalls the decision of the High Court of Justice in *Yolanda Gloten v. the National Labour Court* (HCJ 1678/07) of 2009 excluding live-in caregivers from the applicability of the Hours of Work and Rest Law 1951 and the concerns expressed by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) that the *Gloten* judgment facilitated the application of a discriminatory and inferior legal regime to the work of women migrants. The Committee notes the Government's statement that there are 63,000 female Israeli care workers in the long-term nursing sector who are, unlike foreign caregivers, mostly employed in part-time jobs through nursing care companies. The Government also details the various reasons for the dependency of the

care sector on the work of live-in foreign caregivers and the difficulties related to the period of notice by caregivers who want to leave the employer with a disability or the elderly employer they care for. The Government further indicates that 18,801 foreign workers in long-term nursing care moved between authorized employers in 2011, and that there were no refusals regarding requests to change employers.

The Committee notes the Government's statement that a governmental staff committee will submit recommendations regarding an appropriate legislative framework guaranteeing adequate pay and favourable working conditions for caregivers, after which a hearing will take place in the High Court of Justice. The Government also indicates that the Population and Immigration Authority (PIBA) of the Ministry of Interior is working on a new set of regulations and procedures for the caregiving sector. While the text of these regulations and procedures are not yet at its disposal, the Committee notes from the Foreign Workers' Rights Handbook, to which the Government refers in its report and which was last updated on 1 October 2012, that foreign caregivers continue to be required to reside in the homes of their employers and that live-out arrangements or part-time employment are prohibited. Foreign caregivers are also required to respect a special and longer period of prior written notice (varying from seven days to one month), except in "circumstances in which it is unreasonable to require continued employment". The written notice is to be given to the recruitment agency as well as to the employer or the employer's representative. The Committee notes that a foreign caregiver who leaves the employer without prior written notice or before the minimum notification period may be liable to deportation after a hearing by the PIBA. Taking due note of the Government's detailed explanations regarding the heavy dependence of the care sector on the work of live-in foreign caregivers, the Committee considers it all the more important in the context of the proposed reforms that proper working conditions, including remuneration, hours of work and overtime arrangements, and effective and accessible complaints mechanisms and means of redress, are being ensured for foreign caregivers so as to ensure treatment no less favourable than that which applies to Israeli caregivers in respect of the matters referred to in *Article 6(1)(a)–(d)* of the Convention. ***Considering that the caregiving sector is the largest sector in which foreign workers are employed, the large majority of whom are women, the Committee urges the Government to make every effort to ensure that the proposed legislative framework guaranteeing adequate pay and favourable working conditions for caregivers and the regulations and procedures to be developed by the PIBA are in accordance with the provisions of Article 6 of the Convention, and to expedite this process. The Committee requests the Government to provide detailed information on the outcome of this process, including copies of the text of any new regulations and procedures adopted or proposed as well as on the outcome of the further hearing in the High Court of Justice. The Committee also requests the Government to provide copies of any regulations adopted by the Minister of Interior pursuant to the amendments to the Entry into Israel Law, and information on the number of transfers to another employer of foreign workers in the caregiving sector requested on the basis that it would be unreasonable to continue employment, the outcome of these requests, and the applicable procedures to address such requests.***

*Enforcement and access to legal proceedings.* Further to the above, the Committee recalls the exclusion of the largest group of foreign workers, foreign domestic caregivers who are primarily women, from the protection of the Commissioner for the Rights of Foreign Workers, except in cases of human trafficking, conditions of enslavement or forced labour, and cases of sexual abuse, violence or sexual harassment. The Committee had also noted that the monitoring of the employment relationship between these workers and their employers was apparently left mainly to licensed recruitment agencies. The Committee notes the Government's reply that the Commissioner can suggest that the worker apply for mediation and that there is no obstacle for an employee in the nursing care sector to institute legal proceedings against the employer other than through the Commissioner. The Committee recalls the concerns expressed by the IUF that lower labour courts would be compelled to reject lawsuits from foreign caregivers for overtime pay due to the *Gloten* judgment. ***Recalling that foreign caregivers should be able to enjoy and claim effectively their rights on an equal footing with nationals, as provided in Article 6(1)(d) of the Convention, the Committee requests the Government to provide full information on the manner in which foreign caregivers lawfully in the country can assert their rights in respect of the matters referred to in the Convention in practice and claim compensation. The Committee also requests the Government to include information on the manner in which Israeli caregivers can assert and claim their rights and on the number and nature of complaints filed by foreign and national caregivers with the judicial and administrative bodies and their outcome. The Committee also asks the Government to continue to provide statistics on the number and nature of violations of the relevant laws and regulations identified and addressed by the various responsible authorities. Recalling the Government's intention to study with a view to applying, in cooperation with the social partners, the best practices for the treatment of foreign workers in line with the provisions of the Convention, the Committee reiterates its request to the Government to indicate any progress made in this regard.***

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

## Kenya

### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1979)**

*Articles 10, 12 and 14(a) of the Convention.* National policy on equality of opportunity and treatment, and free choice of employment. For a number of years, the Committee has addressed the issue of the existing policy of

“Kenyanization” of employment which was considered by the Committee as contrary to the principle established by the Convention of equality of opportunity and treatment between national and foreign workers provided that foreign workers are residing lawfully in the country of employment. The Committee notes with *interest* that section 5 of the Employment Act 2007 provides that the Minister, labour officers and the Industrial Court shall promote and guarantee equality of opportunity for a person who is a migrant worker or a member of his or her family lawfully within Kenya. Section 5 also prohibits direct and indirect discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status, with respect to recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of employment. Besides, it establishes that an employer shall pay his or her employees equal remuneration for work of equal value. The Committee further notes the adoption of the National Gender and Equality Commission Act, 2011 and the Citizens and Foreign Nationals Management Service Act, 2011. ***The Committee requests the Government to indicate the manner in which section 5 of the Employment Act 2007 is applied in practice, namely how it is translated into a national policy designed to promote and to guarantee equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights and individual and collective freedoms for persons who, as migrant workers or as members of their families are lawfully within its territory, as provided in Articles 10 and 12(a)–(g) of the Convention. Please provide information on the functioning of and the measures adopted on these issues by the National Gender and Equality Commission and the Citizens and Foreign Nationals Management Service.***

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

## Netherlands

### ***Migration for Employment Convention (Revised), 1949 (No. 97)*** ***(ratification: 1952)***

The Committee notes the observations of the Netherlands Trade Union Confederation (FNV), dated 20 August 2012, which were forwarded to the Government for its comments.

*Article 6 of the Convention. Equality of treatment with respect to remuneration and enforcement.* The Committee notes from the Government’s report that the most important change in the Government’s migration policy has been the free movement of workers to and from eight Central and Eastern European countries which joined the European Union (EU) in 2004. The Committee notes the results from the annual report of the labour inspection services on violations of the Foreign Nationals Employment Act (VAW) and the statutory minimum wage (WML). It notes that administrative penalties were introduced for violations of the VAW from 1 January 2005 and of the WML from 1 January 2007, as a condition for allowing the free movement of workers from Central and Eastern European countries. The Committee notes that in 2010, the labour inspection services detected 564 workers being paid below the statutory minimum wage, approximately 50 per cent of whom came from new EU Member States; 40 per cent were of Polish nationality and approximately 20 per cent of the workers were Dutch nationals. According to the Government, the data for 2011 were probably comparable to those of 2010. The Committee notes that the FNV draws attention to the lack of capacity of the labour inspectorate to monitor the working conditions of migrant workers and considers that the inspection services should concentrate on monitoring the payment of equal wages to nationals and migrant workers for work of equal value, rather than just the statutory minimum wage. The Committee notes that in its observations on the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), the FNV indicates that the wage difference between the wage set by collective agreement and the statutory minimum wage can be as high as 20 per cent in labour-intensive sectors of the Dutch economy. Noting that the FNV considers that the full implementation of Convention No. 94, would substantially contribute to the prevention of discrimination between migrant workers and nationals, the Committee also refers the Government to its comments on this Convention. Furthermore, the Committee takes note of the recommendations of the FNV, in its letter of 21 June 2011 to the Minister of Social Affairs and Employment, to improve the knowledge and awareness of migrant workers from Central and Eastern Europe of their rights and terms and conditions of employment, to provide an information “log book” to migrant workers upon arrival, to strengthen the capacity of the labour inspection services to undertake “on-site” inspections, and to create a greater monitoring role for the social partners. ***The Committee requests the Government to reply to the observations raised by the FNV and recalls that Article 6 of the Convention requires ratifying States to apply, without discrimination based on nationality, race, religion or sex, to migrant workers lawfully in the country, treatment no less favourable than that which applies to its own nationals in respect of remuneration, in law and in practice. The Committee also requests the Government to provide information on the measures taken to further strengthen the capacity of the labour inspectorate to monitor equal treatment regarding wages paid to migrant workers and nationals beyond the minimum wage.***

*Article 3 and Annex I, Article 3. Measures against misleading propaganda and supervision of private agencies.* The Committee notes that, according to the FNV, there are 300,000 workers from Central and Eastern Europe in the Netherlands, half of them working for temporary agencies, and recalls the importance of measures to protect migrant workers from misleading information stemming from intermediaries or employers, in accordance with *Article 3* of the Convention. The Committee notes the Government’s statement that combating fraud in the labour market is one of the priorities of the Ministry of Social Affairs and Employment and that as of 1 January 2013, the administrative fines for



labour law offences will be substantially increased. The Government also refers to the launching by the Ministry of Social Affairs and Employment of a multidisciplinary project which aims to strengthen the capacity of the labour inspectorate to tackle “mala fide” temporary work agencies, and to analyse policy measures. The first concrete measure resulting from the project, in which the FNV also participates, was the establishment of a hotline placed within the labour inspectorate, on “mala fide” temporary work agencies for all citizens and companies. The Committee notes that the FNV, while supporting the measures taken by the Government, draws attention to some persistent abusive arrangements by “mala fide” agencies in the construction and transport sectors, leading to discrimination against migrant workers and false competition in the labour market. The FNV further states that the system of self-regulation of private recruitment agencies, which became fully effective in January 2007 and which was to be evaluated in 2008, is not yet well functioning and that certified agencies do not always comply with the rules either. ***The Committee asks the Government to reply to the observations made by the FNV and to continue to provide information on the supervision of temporary work agencies and the results achieved. Please also indicate whether any code of conduct or other guidelines have been put in place to prevent the use of misleading propaganda leading to abusive practices by temporary work agencies as well as abuse and discrimination by private agencies of migrant workers.***

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 2014.]***

## Philippines

### ***Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 2009)***

The Committee notes the Government’s first and second reports and the legislation and statistical information attached thereto.

***Statistics on migration flows.*** The Committee notes that the Philippines is mainly a country of emigration and that according to statistics of the Commission on Filipinos Overseas (CFO), 9,452,984 Filipinos were working and living overseas as of December 2010. Of those, 47 per cent are permanent residents in the country of destination, and 45 per cent are overseas Filipino workers who are expected to return at the end of their contract of employment. The remaining 8 per cent of the total estimated number of overseas Filipinos are in an irregular situation (i.e. undocumented, or without valid residence or work permits, or overstaying in a foreign country). The highest number of permanent overseas Filipinos is found in the Americas (3,481,263, mostly in the United States and Canada), while the highest number of temporary overseas Filipinos are found in West Asia (2,717,046, mostly in Saudi Arabia, United Arab Emirates, Qatar, Kuwait and Bahrain) and in South and East Asia (644,446, mostly in China – Hong Kong Special Administrative Region, Japan, Malaysia, Taiwan and Singapore). The Committee further notes from the statistics collected by the Philippine Overseas Employment Administration (POEA) that of the 340,279 land-based overseas Filipinos deployed in 2010, 55 per cent were women, the majority of whom are employed in the services sectors. The Committee notes from the Government’s report to the United Nations Committee on Migrant Workers that according to the most recent data there are 36,150 foreign workers in the Philippines (CMW/C/PHP/1, 7 March 2008, paragraphs 36–45). ***The Committee requests the Government to continue to provide detailed information on the numbers of overseas Filipino workers (hires and re-hires) by economic sector, sex and country of destination. Please also provide up-to-date statistics, disaggregated by sex and nationality, as well as economic sector, on the number of migrants that have entered the Philippines for employment.***

***Laws, policies and structures promoting and protecting the rights of migrant workers.*** The Committee notes with ***interest*** the extensive legal and policy framework applying the Convention, illustrating the Government’s commitment to promoting and protecting the rights of Filipino migrant workers. It notes, in particular, Republic Act (RA) No. 8042 on Migrant Workers and Overseas Filipinos of 1995, as amended by RA No. 9422 to Strengthen the Regulatory Functions of the Philippine Overseas Employment Administration of 2006; RA No. 10022 Further Improving the Standard of Protection and Promotion of Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress and for Other Purposes, the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995; RA No. 9208 on the “Anti-Trafficking Act” of 2002, the POEA’s Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, 2002, and the Overseas Workers’ Welfare Administration (OWWA) Omnibus Policies. The Committee also notes with ***interest*** the ratification by the Philippines of a number of international instruments relevant to migrant workers, in particular the United Nations Convention on the Protection of the Rights of All Migrant Workers and their Families (1990), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and most recently, the Domestic Workers Convention, 2011 (No. 189).

Furthermore, the Committee notes with ***interest*** the multitude of programmes for overseas Filipino workers covering all stages of the migration process (from pre-departure, arrival in destination country and return), as well as the support structures for Filipino migrant workers, including the Commission on Filipinos Overseas (CFO), the National Reintegration Center for Overseas Foreign Workers (NRCO), OWWA, POEA, the Department of Labor and Employment (DOLE), the Technical Education and Skills Development Agency (TESDA), the Inter-Agency Council Against Trafficking (IACAT), the Department of Foreign Affairs (DFA) and the Philippine Overseas Labor Offices (POLOs), and

labour attachés and consulates abroad addressing migrant workers' issues. The Committee notes in particular that the CFO is in charge of conducting a range of pre-departure programmes for Filipinos migrating permanently to other countries, including the pre-departure orientation seminars (PDOS), the Guidance and Counselling Programme for spouses and partners, the Peer Counselling Programme, and the Community Education Programme. It also notes the important role and functions of the POEA which is in charge of the recruitment and placement of overseas Filipino workers. The activities of the POEA include selection, referral to medical examination, processing of contracts, assistance and securing of passports and visas, pre-employment orientation seminars (PEOS) and anti-illegal recruitment seminars, PDOS and travel arrangements. PDOS are mandatory for all overseas Filipino workers going through the government-to-government arrangement and those who are directly employed by a foreign employer without the help of a recruitment agency ("name hires"). PEOS are offered in coordination with the local government units and aimed at providing prospective overseas workers with information on the realities of international labour migration including its challenges and risks. Gender-sensitive information and programmes and services are directed to prospective female migrants, including preparatory courses on conditions of work and life. The Committee further notes that Migrant Workers and Other Overseas Filipinos Resource Centers (MWRCs) are established in the premises of Philippine embassies in countries in which there are a large number of Filipino overseas workers. MWRCs provide a range of services, including counselling and legal services; welfare assistance, information, advice and programmes to promote social integration, including post-arrival orientation; registration of undocumented workers, training and skills upgrading, gender sensitive programmes and activities to assist with the particular needs of women migrant workers; orientation programmes for returning migrants, and monitoring of the situation with respect to migrant workers. The Legal Assistant for Migrant Workers in the DFA and the Legal Assistance Fund (RA 8042) have also been created with a view to ensuring that overseas Filipino workers have access to appropriate redress mechanisms while employed abroad. The National Re-integration Council for Overseas Foreign Workers (NRCO) delivers reintegration services to Filipino migrant workers using the full-cycle approach covering pre-departure, on-site and return phases of migration. Services include financial literacy orientation, counselling, and assistance with respect to local and overseas employment opportunities, skills training and upgrading and livelihood and business development. ***The Committee requests the Government to continue to provide information on the activities undertaken by the above institutions to give effect to the provisions of the Convention and to promote and protect the rights of Filipino migrant workers.***

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

## Slovenia

### ***Migration for Employment Convention (Revised), 1949 (No. 97)*** ***(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:

The Committee notes the observations by the Association of Free Trade Unions of Slovenia (AFTUS) annexed to the Government's report.

***Article 6(1)(a)(i) of the Convention. Equality of treatment with respect to conditions of work.*** The Committee recalls that under the Employment and Work of Aliens Act (and subsequent amendments until Act 52/07), a foreigner with an employment permit could only take up employment with the employer to which the permit for employment was issued; a personal employment permit with three-year validity, which enables free access to the labour market, could be obtained by an alien with vocational education who was continuously employed for the last two years prior to the application at the same employer. The Committee had noted in this regard AFTUS's concern that allowing foreign workers with an employment permit to work only for the employer who obtained their work permit increased the employer's opportunity to exploit migrant workers with respect to working time, payment, rest periods and annual leave. The Committee had requested the Government to indicate how the concern of the dependency of migrant workers with an employment permit on one individual employer was addressed and to examine the conditions of work of migrant workers in those sectors in which they are primarily employed. The Committee notes the Government's indications that due to observance of increased dependency of migrant workers on individual employers, the Act on Employment and Work of Aliens was amended with a view to allowing greater flexibility to obtain a personal employment permit with three-year validity (giving free access to the labour market). The Committee notes that the amended Employment and Work of Aliens Act No. 26/2011 henceforth allows a foreign worker with vocational training or having acquired a national professional qualification in Slovenia who, in the past 24 months has been employed for at least 20 months, to apply for a personal employment permit (section 22(4)). ***Noting, however, that the law continues to provide that a foreigner with an employment permit can only take up employment with the employer to which the permit for employment was issued (section 10(4)), the Committee asks the Government to clarify how these amendments help reduce, in practice, the worker's dependency on an individual employer and the risk of non-respect of statutory provisions regarding conditions of work. Noting that the information provided on labour inspection services in 2009 covers violations of the Employment and Work of Aliens Law and the Law on the Prevention of Illegal Work and Employment Act, and not conditions of work, the Committee asks the Government to indicate the specific measures taken to ensure full application to migrant workers of the labour law provisions concerning remuneration, hours of work, overtime arrangements, rest periods and annual leave, as well as information on the number and nature of violations found particularly in sectors or occupations employing workers with an employment permit, and an indication of the sanctions imposed.***

***Article 6(1)(a)(iii). Equal treatment with respect to accommodation.*** The Committee previously noted concerns raised by AFTUS regarding substandard housing conditions of migrant workers and the need to strengthen supervision in this regard, to impose dissuasive penalties on potential violators and to establish minimum standards of living for migrant workers at the national level. The Committee notes with interest that pursuant to section 13(1) and (2) of the Employment and Work of Aliens

Law No. 26/2011 employers who employ foreigners and provide for their accommodation are obliged to meet minimum accommodation and hygiene standards, the terms of which will be set by ministerial regulations. The Committee notes that the rules on setting minimum standards for accommodation of aliens, who are employed or work in the Republic of Slovenia were published in the *Official Gazette* of the Republic of Slovenia No. 71/2011 and will enter into force as of January 2012. Supervision will be conducted by the labour inspectorate. **The Committee asks the Government to provide information on the activities of the labour inspectorate to enforce the rules on setting minimum standards for accommodation of aliens, including any violations detected and sanctions imposed, as well as any other measures taken to ensure that migrant workers are not treated less favourably with respect to accommodation.**

*Article 6(1)(b). Equal treatment with respect to social security.* The Committee notes that AFTUS draws attention to section 5 (unemployment benefits) of the Agreement of Social Security between Slovenia and Bosnia and Herzegovina, the implementation of which prevents the majority of the workers from Bosnia and Herzegovina from exercising the right to unemployment benefits as such benefits are subject to permanent residence. The Committee understands that with a view to addressing this issue the Social Security Agreement has been amended, signed by both parties in 2010 and ratified by Slovenia. **Noting that the amended Social Security Agreement will enter into force as soon as it is ratified by the Government of Bosnia and Herzegovina, the Committee hopes that the provisions of the modified Agreement will ensure equality of treatment with respect to unemployment benefits in conformity with Article 6(1)(b) of the Convention, and asks the Government to provide information on any developments 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.**

### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (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:

The Committee notes the observations by the Association of Free Trade Unions of Slovenia (AFTUS) annexed to the Government's report.

*Articles 10, 12(e) and 14(a). Free choice of employment.* The Committee previously noted concerns expressed by AFTUS that under the work permit system established by the Employment and Work of Aliens Act (Acts Nos 66/00, 101/05 and 52/07) foreign workers issued with an employment permit did not have the free choice of employment until they met the conditions for obtaining a personal work permit. The Committee notes that the Employment and Work of Aliens Act was further amended in 2009 and 2011 (Acts 46/2009 and 26/2011) and that under the new legislation citizens from the European Union (EU), the European Economic Area (EEA) and Switzerland, as well as foreigners with a permanent residence permit have free access to the labour market. Third-country nationals with a "personal work permit" have free access to the labour market during the three-year validity period while a foreigner with an "employment permit", issued for a maximum of one year, continues to be tied to the employer to whom the permit is issued (section 10(2) and (3)). The employment permit can be renewed or reissued for a period not exceeding one year (section 25(1)). The Committee further notes that pursuant to section 22(3) a foreign worker with vocational training or who has acquired a national professional qualification in Slovenia who, in the past 24 months has been employed for at least 20 months, can apply for a personal employment permit (section 22(4)). The Government indicates in this regard that the foreigner who does not meet the condition of having at least vocational education may be integrated into the procedure of acquiring a national vocational qualification. Section 30(1) allows for some flexibility for foreigners with higher education for whom an employment permit or permit for work has been issued, to be employed by two or more employers. **Recalling that Article 14(a) of the Convention allows the State to make the free choice of employment subject to temporary restrictions during a prescribed period not exceeding two years, and that Article 10 provides for the adoption of a national policy on equality of opportunity and treatment including with respect to access to vocational education, the Committee asks the Government to indicate the measures taken or envisaged to inform foreign workers with employment permits or permits for work of the possibility of acquiring a national vocational qualification, and provide information on the number of workers that have participated in such training. The Government is also requested to provide information on the number of migrant workers without vocational training or a national vocational qualification who are working under employment permits for a period exceeding two years.**

*National equality policy and integration of migrant workers in society.* The Committee previously noted the need for systematic measures aimed at the integration of migrant workers and their families in society. The Committee notes the Government's indication that the Decree on Aliens Integration No. 65/2008 provides for integration programmes intended for third-country nationals residing in Slovenia with a permanent residency permit and their family members, and for third-country nationals who have been residing in Slovenia on the basis of a temporary residence permit for at least two years and whose permit is valid for at least one year, and for their family members. The Committee also notes that a draft Decree amending and supplementing the Decree on Aliens Integration of 23 July 2010 would allow for inclusion in integration programmes of all third-country citizens residing in Slovenia on the basis of a residence permit issued for at least one year and third-country citizens who are family members of Slovenian citizens or EEA citizens residing in Slovenia on the basis of a residency permit, regardless of its duration. The Committee notes that the programmes cover Slovenian language courses and courses on Slovenian history, culture and constitutional arrangements, and that between November 2009 and the end of May 2010, 600 third-country nationals attended. The Government also indicates that programmes have included workshops going beyond intercultural differences and address reasons for and consequences of discrimination and xenophobia. The Committee notes the observations by AFTUS that an effective integration policy of migrants should be based on the earliest possible integration into suitable programmes of integration and social inclusion and that free participation into language programmes and learning about Slovenia culture, history and constitution should be provided to all foreigners, including those with a temporary residence permit for a period less than a year. The Committee further notes that an Alien Integration Council was created in 2008 with a view to a coordinated and effective implementation of the measures for integration of foreigners, but that according to AFTUS the Council does not fulfil its purpose. **The Committee asks the Government to provide information on the status of the adoption of the draft Decree amending and supplementing the Decree on Aliens Integration of 23 July 2010, and to indicate whether any consideration is being given to the concerns raised by AFTUS regarding the free participation of all foreigners, including those with a residency permit of less than a year in programmes of integration and social inclusion. Please also provide information on the activities of the Alien Integration Council.**

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.*

## United Kingdom

### **Migration for Employment Convention (Revised), 1949 (No. 97)** (ratification: 1951)

The Committee notes the observations dated 29 August 2012, of the Trade Union Congress (TUC), which were prepared in collaboration with Anti-Slavery International and Kalayaan, to the extent that they cover matters which relate to the application of the Convention.

*Article 6 of the Convention. Equality of treatment – foreign domestic workers.* The Committee notes that in its communication, the TUC draws particular attention to the working conditions of foreign domestic workers, including the fact that living and working in their employers' homes makes them more vulnerable to abuse and non-respect of their rights. According to the TUC, the changes introduced on 6 April 2012 for overseas domestic workers, removing the fundamental safeguards of the Overseas Domestic Work Visa (ODW visa), including the right to change employer, are damaging to the protection of migrant domestic workers and increasing their vulnerability to abuse and unequal treatment. According to the TUC, the arrangement prior to 6 April 2012 under the ODW visa had been shown to work well and had been recognized internationally as an example of good practice. The TUC maintains that migrant workers, while theoretically enjoying equal treatment in respect of the matters set out in *Article 6* of the Convention, are unable to access and enforce their employment rights in an effective manner in practice. According to the TUC, migrant domestic workers have no opportunity to pursue justice through the courts in the absence of the right to stay, and because of the absence of a residence permit allowing them to pursue compensation through the employment tribunals or civil courts. Referring to cases registered by Kalayaan, the TUC also draws attention to the heightened power imbalance between diplomatic domestic workers and their employers due to the status of the employer and the diplomatic immunity they are able to invoke, which makes domestic workers highly vulnerable to non-respect of employment rights and abuse, including payment below the national minimum wage, excessive working hours, psychological, physical and sexual abuse, withdrawal of passports and prohibition to leave the house unaccompanied. Further, the TUC challenges the effectiveness of certain protection measures put in place by the Government, namely requesting more evidence of an employee–employer relationship, requiring written terms and conditions of employment agreed to by the employer and the worker, and by providing translated information to domestic workers about their rights in the United Kingdom, as well as the possibility to contact the Pay and Work Rights Helpline for persons in need of employment advice.

The Committee notes that in 2008 the United Kingdom Border Agency (UKBA) introduced the Points-Based System (PBS) replacing over 80 previous economic migration “routes” with a 5-tier system. It also notes that on 6 April 2012 the Government introduced important changes regarding the employment of overseas domestic workers in the United Kingdom. The Committee notes that overseas domestic workers in diplomatic households are covered as “private servants in diplomatic households” under the PBS, Tier 5 (Temporary worker – international agreement) category. Migrant workers who applied for a visa in this capacity on or after 6 April 2012 can apply to extend their stay for a maximum of 12 months at a time, up to a total of five years or the length of their employer's posting, whichever is shorter. They cannot change employer during their stay but may sponsor dependants. Diplomatic domestic workers may only work in the household of the employer recorded on the certificate of sponsorship, and will not be able to apply for settlement in the United Kingdom. With regard to overseas domestic workers in private households – who are not included in the PBS – the Committee notes that under the new Immigration Rules (section 159A and 159B) these domestic workers will only be allowed entry into the United Kingdom to accompany their overseas employer on a visit to the United Kingdom for the time that the employer is in the country, or for six months, whichever is shorter. No extensions are allowed beyond this time. Overseas domestic workers may no longer change employer, sponsor dependants or apply for settlement in the United Kingdom from this route. For overseas domestic workers who have applied for an ODW visa before 6 April 2012, the former Immigration Rules continue to apply (sections 159EA and 159EB).

The Committee notes from the statistics published by the Home Office that for the year ending June 2012, there were 14,779 “out-of-country” visas and 4,384 “in-country” extensions of stay issued to overseas domestic workers in private households (making up, respectively, 14.1 per cent and 4.73 per cent of the total number of “out-of-country” visas and total “in-country” extensions issued); two “out-of-country” visas and five “in-country” extensions were issued to domestic workers in diplomatic households. Visas were also issued or extensions granted to dependants of these workers. *The Committee requests the Government to reply to the observations made by the TUC and provide detailed information on the following:*

- (i) *The measures taken to enforce the application of the rights of overseas domestic workers regarding the matters set out in Article 6(1)(a)–(d) of the Convention including the relevant complaints procedures and mechanisms in place. Please also include information on the availability of and accessibility to legal aid and assistance for migrant workers. The Committee also requests the Government to provide information on the manner in which*

*effective enforcement is being monitored, including information of any complaints received regarding non-respect of rights and their outcome for both the employer and the domestic worker.*

- (ii) *The specific procedure in place for both categories of overseas domestic workers who have left their employer because of abuse and who have filed a complaint with the competent authorities regarding unequal treatment with respect to any of the matters covered by Article 6 of the Convention, and any measures taken to reduce domestic workers' dependence on their employer as this is an important aspect of ensuring that equal treatment is applied to migrant workers in practice.*
- (iii) *The measures taken to ensure that the rights under the national legislation as well as the available complaints procedures and mechanisms for redress are made known and are understood by migrant domestic workers.*

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 2014.]*

## Uruguay

### **Migration for Employment Convention (Revised), 1949 (No. 97)** (ratification: 1954)

*Article 1 of the Convention. Developments in national legislation, policies and agreements.* The Committee notes with **interest** the promulgation of the Migration Act (No. 18250 of 6 January 2008) and its implementing regulations (Decreets Nos 394/2009, 330/2008, 357/2008 and 559/2008). The Government indicates that these provisions constitute a legislative framework with the aim of establishing a human rights policy for migration, regulating the admission, entry, residence and departure of persons to and from the national territory on the basis of the recognition of equal rights of migrants in relation to Uruguayan nationals regarding health, work and social security. The Act provides that the State shall promote the social and cultural integration of migrants within the national territory and their participation in public decision-making and also their inclusion in the education system (section 13) and shall provide monitoring for Uruguayan workers who have emigrated (Chapter V). Section 24 of the Act provides for the establishment of the National Migration Board as the advisory and coordinating body for migration policies formulated by the Executive Authority. Section 63 of Decree No. 394/2009 establishes the functions of this Board. Section 26 establishes the Advisory Council on Migration composed of the social and trade union organizations concerned with the subject of migration, whose function is to advise the National Migration Board on subjects relating to immigration and emigration, the formulation of migration policies and the monitoring of compliance with the applicable regulations in force. The Committee notes with **interest** the ratification on 14 June 2012 of the Domestic Workers Convention, 2011 (No. 189). **The Committee requests the Government to continue to provide information on the implementation of the new Migration Act and its implementing regulations, particularly the operation of and the measures adopted by the National Migration Board. The Committee requests the Government to provide information on any obstacles encountered in the implementation of the Act and the measures taken to overcome them.**

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

## Bolivarian Republic of Venezuela

### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** (ratification: 1983)

*Article 10 of the Convention. Equality of opportunity and treatment.* The Committee has been referring for almost 20 years to the need to amend or repeal sections 27, 28, 30 and 317 of the Organic Labour Act. These provisions establish a 10 per cent limit on foreign workers in the workforce and the overall wages paid to such workers may not exceed 20 per cent of the total wage bill of the enterprise. The Committee notes the adoption on 30 April 2012 of the Organic Act concerning labour and male and female workers. The Committee notes with **regret** that despite the time that has elapsed and the numerous requests made, the Government has not taken the opportunity of the adoption of the Organic Act concerning labour and male and female workers to amend the provisions referred to above (now sections 27, 28, 29 and 231). **The Committee urges the Government to take the necessary steps to amend or repeal sections 27, 28, 29 and 231 of the Organic Act concerning labour and male and female workers in order to align the legislation fully with the principle of equality of opportunity and treatment in employment for migrant workers and national workers.**

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. 97** (Algeria, Bahamas, Barbados, Bosnia and Herzegovina, Burkina Faso, Cameroon, China: Hong Kong Special Administrative Region, Cuba, Dominica, Ecuador, France, Germany, Grenada, Guatemala, Guyana, Israel, Kenya, Madagascar, Malawi, Montenegro, Netherlands, Philippines, Saint Lucia, Slovenia, Tajikistan, The former Yugoslav

*Republic of Macedonia, United Kingdom, United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Guernsey, United Kingdom: Isle of Man, United Kingdom: Jersey, United Kingdom: Montserrat, Uruguay, Bolivarian Republic of Venezuela, Zambia); **Convention No. 143** (Bosnia and Herzegovina, Burkina Faso, Cameroon, Guinea, Kenya, Montenegro, Philippines, San Marino, Slovenia, Sweden, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Uganda, Bolivarian Republic of Venezuela).*

## Seafarers

### General observation

#### **Getting ready for the entry into force of the Maritime Labour Convention, 2006**

On 20 August 2012, the 29th and 30th instruments of ratification of the Maritime Labour Convention, 2006 (MLC, 2006), were registered by the Director-General of the International Labour Office. The Convention provides that it will come into force:

... 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.

The registration of the 30th ratification combined with the 29 ratifications by Members with a total share of the world gross tonnage of ships of nearly 60 per cent means that the two conditions for the initial entry into force of the MLC, 2006, have now been met. Accordingly, the Convention will enter into force on 20 August 2013, for the following 30 Members (in order of ratification): Liberia, the Marshall Islands, the Bahamas, Panama, Norway, Bosnia and Herzegovina, Spain, Croatia, Bulgaria, Canada, Saint Vincent and the Grenadines, Switzerland, Benin, Singapore, Denmark, Antigua and Barbuda, Latvia, Luxembourg, Kiribati, the Netherlands, Australia, Tuvalu, Saint Kitts and Nevis, Togo, Poland, Palau, Sweden, Cyprus, the Russian Federation and the Philippines.

For Members that ratify after 20 August 2012 the Convention will enter in force 12 months after the date their ratifications are registered.

Unlike many other international labour Conventions, the MLC, 2006, was not accompanied by a non-binding international labour Recommendation, but rather has integrated binding and non-binding norms in a vertical structure of mandatory Articles, Regulations and Standards and non-mandatory Guidelines. The Convention requires ratifying Members to give “due consideration” to those Guidelines when implementing their obligations. Thus, reports submitted by Members under article 22 of the ILO Constitution will also cover this new element concerning the consideration that the Member has given to non mandatory Guidelines. The Convention also allows ratifying Members that are not in a position to fully implement the provisions of a mandatory Standard (other than the Standards related to compliance and enforcement) to adopt provisions in their laws and regulations or other measures which are “substantially equivalent” to the provisions of that Standard.

These are the main examples of the principle of “firmness and flexibility” that underlies the MLC, 2006: firmness on rights and principles with considerable flexibility for each ratifying Member to determine the ways in which those rights and principles will be implemented in their details. They present a challenging opportunity for the supervisory system of the International Labour Organization to adopt a broad teleological approach in determining whether or not a ratifying Member is giving proper effect in law and in practice to the comprehensive requirements of the MLC, 2006. This is an approach which the Committee has sought to adopt with respect to its review of the implementation of other Conventions, but which is greatly facilitated by the text of the MLC, 2006.

The work of the Committee should also be facilitated by the system of enforcement and compliance established by the Convention, which provides a role to all the various actors at the national level: to flag States for inspection and certification, complemented by port State control, to shipowners for devising proper procedures for ongoing compliance and ensuring implementation on their ships, to seafarers and seafarers’ organizations for drawing attention to particular cases of non-compliance, and to the States of residence for supervising the activities of recruitment and placement services established on their territory.

In addition, the MLC, 2006, gives these same actors a role at the international level, in the framework of the special tripartite committee, that is to be established by the Governing Body, which is to keep the working of the Convention under continuous review and which, in particular, will have power to amend the details set out in the Code of the Convention, subject to approval by the International Labour Conference. This collective role should enable an interesting collaboration between these maritime actors and the Committee of Experts through the sharing of information and the adoption of complementary action.

The Committee recalls the two major innovations introduced by the MLC, 2006: (i) a *certification system* for ships engaged in international voyages; and (ii) a *no more favourable treatment clause* for ships flying the flag of non ratifying countries. Vessels flying the flag of ratifying countries will carry maritime labour certificates offering prima facie evidence of compliance and hence should not, in principle, experience delays due to lengthy port State control inspections. In contrast, vessels flying the flag of non-ratifying countries cannot be issued certificates of compliance and would thus be exposed to full-fledged inspection for compliance with the MLC, 2006, when visiting foreign ports. It is therefore in the highest interest of all member States who may not have yet done so to ratify the Convention the soonest possible so that ships flying their flag – and by extension their maritime sector and national economies – can draw the full benefits of the new regime. By moving rapidly towards ratification of the MLC, 2006, they also help to shorten the transition period during which they will continue to be bound by existing maritime Conventions that they may have previously ratified but may not cover the full range of areas covered by the MLC, 2006, that are subject to port State control inspection.

The Committee also understands that many countries are in the process of revising their maritime legislation for the purpose of implementing the provisions of the MLC, 2006. In this connection, and bearing in mind that the MLC, 2006, does not apply to the fishing sector, the Committee considers it important to draw attention to the Work in Fishing Convention, 2007 (No. 188), and strongly encourages the governments concerned to consider the possibility of regulating the working and living conditions of fishers as part of the same revision exercise, as may be appropriate, with a view to avoiding the duplication of a lengthy and complex legislative process.

The Committee of Experts takes very seriously the new approach called for by the MLC, 2006, bearing in mind that the success of a flexible approach that does not prejudice the effectiveness of international labour standards in their essence, could encourage the adoption of Conventions providing for a similar approach in other areas covered by the ILO's mandate.

## Barbados

### **Seafarers' Identity Documents Convention, 1958 (No. 108) (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 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.***

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

## Costa Rica

### **Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1979)**

*Article 2 of the Convention. Statistics and investigations of occupational accidents.* The Committee notes the information supplied by the Government on the number of accidents that occurred in the fisheries sector between 2006 and 2011. It points out, however, that in its previous observation it drew the Government's attention to the fact that according to the Convention, statistics of occupational accidents on board ships must cover not only their number, but also their nature, causes and effects. They must also specify the department on board ship – for example, deck, engine or catering – and the area – for instance at sea or in port – where the accident occurred. ***The Committee hopes that the Government will provide detailed statistics in its next report containing all the above data on occupational accidents occurring on board vessels.***

With regard to investigations, the Committee notes that the Government refers to section 214 of the Labour Code, which requires employers to send to the National Insurance Institute (INS) all relevant information about the occupational risks that employees are exposed to, and to cooperate in INS investigations. It points out, however, that according to *Article 2(4)* of the Convention, in the event of an occupational accident resulting in loss of life or serious personal injury, the competent authority itself shall undertake an investigation into the causes and circumstances of the accident. ***The Committee hopes that the Government will take the necessary measures in the very near future to introduce this obligation in the legislation, and requests it to keep the Office informed of any decisions taken to this end, describing the procedures that apply in investigations required under this provision of the Convention.***

*Article 3. Research.* ***In the absence of a reply to its previous comments on this point, the Committee again asks the Government to provide information on any research carried out on general trends in occupational accidents on board ship and such hazards as are brought out by statistics.***

*Articles 4 and 5. Provisions on the prevention of occupational accidents.* ***The Committee again requests the Government to indicate whether the regulations implementing section 162 of Act No. 8436 of 10 February 2005 on fisheries and aquaculture, which specify the measures needed to ensure the occupational safety and health of crew members, have been adopted and, if so, to provide a copy. It also reiterates its request for information on the procedure for certifying observance of national and international safety standards which is provided for in section 198bis of the Labour Code and is a requirement for the delivery or renewal of fishing licenses.***



*Article 7. Occupational safety and health committees. In the absence of a reply to its previous comments on this point, the Committee again requests the Government to indicate whether the obligation to set up occupational safety and health committees in work centres employing ten or more workers, established by Decree No. 18379-TSS of 19 July 1988, applies to ships.* In addition, the Committee recalls that this Article of the Convention requires the appointment, from amongst the crew of the ship, of a suitable person or suitable persons, or of a suitable committee, responsible under the master for accident prevention, but does not restrict the coverage of the provision to vessels having at least ten seafarers on board. *It accordingly asks the Government to indicate the measures taken or envisaged to ensure that this provision is applied to all ships covered by the Convention.*

*Article 8. Programmes for the prevention of occupational accidents.* Further to its previous comment, the Committee notes the information supplied by the Government to the effect that consultations on the occupational accident prevention programmes were held with the competent institutions but that the information requested has not as yet been collected. *It requests the Government in its next report to send such information as is available on the establishment and implementation of these programmes in the maritime sector.*

Lastly, the Committee recalls that the main provisions of the Convention have been incorporated in Regulation 4.3, Standard A4.3 and Guideline B4.3 of the Maritime Labour Convention, 2006 (MLC, 2006) and that compliance with Convention No. 134 will therefore facilitate observance of the corresponding provisions of the MLC, 2006. *The Committee would be grateful if the Government would keep the Office informed of any developments regarding the process for the ratification and effective implementation of the MLC, 2006.*

## Guinea

### **Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1977)**

*Article 2 of the Convention. Prevention of occupational accidents for seafarers.* The Committee recalls its previous comments in which it asked the Government to take all the necessary steps to ensure that full effect is given to the provisions of the Convention. The Government indicates in its last report that, with the return to constitutional order and the resumption of the activities of the Labour and Social Legislation Advisory Committee, steps will be taken to prepare laws and regulations which will give effect to the Convention. The Committee understands that the Labour and Social Legislation Advisory Committee was revived under the provisions of section 96 of Presidential Decree No. D/2008/040/PRG/SGG of 28 July 2008 establishing the competencies and structure of ministerial departments, general secretariats and the Prime Minister's Office. *The Committee therefore hopes that the Government will make every effort to ensure that the legislative texts giving effect to the Convention will be adopted in the very near future. It requests the Government to keep the Office informed of any progress made in this field and to send a copy of these texts once they have been adopted.*

Finally, the Committee hopes that the Government will soon be in a position to ratify the Maritime Labour Convention, 2006 (MLC, 2006), which revises Convention No. 134 and 36 other international maritime labour Conventions and whose Regulation 4.3 and corresponding Code contain detailed provisions on maritime occupational safety and health and accident prevention. *The Committee requests the Government to keep the Office informed of any decisions taken on this matter.*

## Lebanon

### **Seafarers' Pensions Convention, 1946 (No. 71) (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:

*Articles 2 to 4 of the Convention. Pension scheme for seafarers.* The Committee has been drawing the Government's attention to the need to adopt legislation implementing the requirements of the Convention. More concretely, the Committee has requested the Government to take the necessary measures in order to introduce into either the Merchant Shipping Code or the Social Security Act provisions establishing a pension scheme for seafarers on retirement from sea service. The Government's earlier indications were that it was in the process of preparing draft texts regulating the seafarers' pension scheme, in consultation with the Association of Lebanese Shipowners and the Federation of Maritime Transport Unions. However, in its last report, received in November 2010, the Government states that nothing has been done with regard to the implementation of the Convention or the adoption of executive decrees and measures concerning Lebanese workers employed on board Lebanese-registered vessels. *Noting therefore that the Convention in its entirety is still not applied in practice, and that no progress has been made for more than 15 years, the Committee hopes that the Government will 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.*

## Peru

### **Seafarers' Pensions Convention, 1946 (No. 71) (ratification: 1962)**

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO).* The Committee notes that at its 313th Session (March 2012), the Governing Body adopted the report of the committee set up to examine a representation alleging non-observance by Peru of Convention No. 71, made under article 24 of the ILO Constitution by the Autonomous Workers' Confederation of Peru (CATP) (GB.313/INS/12/4). The Committee recalls that in its conclusions the Governing Body asked the Government: (1) to take the necessary measures to ensure that the contributions of fishers are effectively equivalent to no more than half of the cost of the pensions payable under the scheme, in any circumstances, in accordance with *Article 3(2) of the Convention*; (2) to proceed to the payment of the benefits owed that are still awaiting payment by the Fishers' Benefits and Social Security Fund (CBSSP) as soon as possible; (3) to continue, once the process of the dissolution and liquidation of the CBSSP has been completed, to secure the maintenance of a scheme for the payment of pensions that is in compliance with the requirements of the Convention both in terms of the collective financing and the guaranteed rate of pension benefits; (4) to ensure that full effect is given to the ruling of the Transitional Civil Chamber of the Supreme Court of Justice of 24 November 2009, ordering payment of the amounts owed to the CBSSP; (5) to take all necessary measures to ensure that the rate of the pensions paid to any of the former employees of the Peruvian Steamship Company (CPV) who were seafarers and have completed a prescribed period of sea service is in all cases at least equal to the rate resulting from the application of the minimum replacement rate determined by *Article 3(1)(a) of the Convention*, if necessary by revising the ceiling applicable to such pensions. The Governing Body furthermore invited the Government to provide, in a report to be submitted to the present session of the Committee of Experts, detailed information on measures adopted to give effect to its recommendations.

The Committee notes the information sent by the Government on the measures taken to enable the pensions due from the CBSSP to be paid. It notes that according to the applicable legislation, obligations towards CBSSP beneficiaries, including retirement pension obligations, rank second in the order of priority of payments due from the CBSSP, coming after obligations towards employees and former employees of the Fund. To enable the various debts to be settled, the CBSSP, in the process of liquidation, is drawing up a list of its creditors, it being understood that it may settle a lower ranking claim before a claim of higher rank only if it deposits the necessary resources in a financial institution. Furthermore, the CBSSP is still in operation and receives income in the form of social contributions. An inventory has been made of the Fund's assets and some of them are in the process of being realized. Lastly, the CBSSP's claims vis-à-vis the Peruvian State amount to some US\$10 million, without interest. As to the implementation of the decision handed down by the Supreme Court of Justice on 24 November 2009, the Government refers to transfers that have already been made to the CBSSP. However, the last transfer mentioned was made under Act No. 29529 of 8 May 2010. It would thus appear that there have been no further transfers for over two years. As regards the former employees of the CPV, the Government confirms that retirement pensions are subject to a ceiling of 857.36 new soles (approximately US\$330), but provides no information as to the amount of the pensions actually paid to CPV former employees, and therefore the Committee is unable to ascertain whether the provisions of *Article 3(1)(a) of the Convention* are observed. Furthermore, the Government provides no information on the fishers' contributions to their retirement pension scheme or on measures taken to ensure that the contributions of fishers amount to no more than half of the cost of the pensions. Lastly, the Government provides no information on measures taken to ensure, following the dissolution of the CBSSP and pending the possible transfer of its members to the general (public or private) pension scheme, the maintenance of a pension scheme that is in compliance with the requirements of the Convention.

The Committee also notes the observations made by the CATP in a communication of 31 August 2012, in which the organization alleges that so far the Government has not implemented any of the Governing Body's recommendations.

***The Committee asks the Government to send detailed information on the measures taken to implement the Governing Body's recommendations and to respond to the other points raised in the observation of 2011.***

***[The Government is asked to reply in detail to the present comments in 2013.]***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 8** (Iraq, Nigeria); **Convention No. 9** (Djibouti, Luxembourg); **Convention No. 16** (Djibouti, Guinea, Iraq, Kyrgyzstan, Yemen); **Convention No. 22** (Luxembourg); **Convention No. 23** (Djibouti, Kyrgyzstan, United Kingdom: British Virgin Islands); **Convention No. 55** (Djibouti); **Convention No. 56** (Djibouti); **Convention No. 58** (United Kingdom: British Virgin Islands); **Convention No. 68** (Luxembourg); **Convention No. 69** (Kyrgyzstan, Luxembourg); **Convention No. 71** (Djibouti); **Convention No. 73** (Djibouti, Kyrgyzstan, Luxembourg); **Convention No. 74** (Ghana, Guinea-Bissau); **Convention No. 92** (Ghana, Iraq, Kyrgyzstan, Luxembourg); **Convention No. 108** (France: French Southern and Antarctic Territories, Kyrgyzstan, Saint Lucia, United Kingdom: British Virgin Islands); **Convention No. 133** (Côte d'Ivoire, Guinea, Kyrgyzstan, Luxembourg); **Convention No. 134** (Kyrgyzstan); **Convention No. 145** (Iraq); **Convention No. 146** (Iraq, Luxembourg); **Convention No. 147** (Barbados, Dominica, Kyrgyzstan, Luxembourg); **Convention**

**No. 163** (*Slovakia*); **Convention No. 164** (*Slovakia*); **Convention No. 166** (*Guyana, Luxembourg*); **Convention No. 178** (*Luxembourg*); **Convention No. 179** (*France, Ireland*); **Convention No. 180** (*Ireland, Luxembourg*); **Convention No. 185** (*Bosnia and Herzegovina, Brazil, France, Hungary, Pakistan, Russian Federation, Spain, Yemen*).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 108** (*United Kingdom: St Helena*).



## Fishers

### Brazil

#### **Fishermen's Competency Certificates Convention, 1966 (No. 125)** (ratification: 1970)

*Article 5(2) of the Convention. Obligation to carry a certificated mate.* The Committee notes the requirements established by NORMAM-01/DPC concerning minimum safe manning levels on vessels. It notes that the presence of a certificated mate is required on board long-haul vessels and also coastal vessels or other vessels whose gross tonnage exceeds 500 tons. However, the Committee recalls that the Convention requires that all fishing vessels over 100 gross registered tons engaged in operations and areas to be defined by national laws or regulations shall be required to carry a certificated mate. **The Committee hopes that the Government will take steps in the very near future to ensure the implementation of this provision of the Convention and requests it to keep the Office informed of any decision taken on this matter.**

*Articles 7 and 9. Minimum experience required – Mates' and engineers' certificates.* The Committee notes that Annex 2-A to NORMAM-13 defines the requirements for working as a mate (*imediato*) on fishing vessels engaged in inland navigation but does not contain any details of the requirements in terms of professional experience for the exercise of these duties on fishing vessels engaged in high seas operations. **It requests the Government to provide further information on the rules that are applicable in this sphere.**

As regards engineers' certificates, the Committee notes that Annex 2-A to NORMAM-13 establishes a distinction between the following categories: chief engineer on a fishing vessel with engine power below 150 kilowatts and sailing up to 20 miles from the coast; chief engineer on a fishing vessel with engine power below 250 kilowatts and engaged in high seas navigation; chief engineer on a fishing vessel with engine power below 500 kilowatts and engaged in high seas navigation; and chief engineer on a fishing vessel with engine power below 1,000 kilowatts and engaged in high seas navigation. It notes that minimum professional experience as ship's engineer is only required for these last two categories and that this minimum is fixed at two years whereas the Convention requires a minimum of three years' sea service in the engine room. **The Committee hopes that the Government will take steps in the near future to bring the national legislation into line with the provisions of Article 9 of the Convention and requests it to keep the Office informed of any new developments in this regard.**

### Liberia

#### **Medical Examination (Fishermen) Convention, 1959 (No. 113)** (ratification: 1960)

*Article 3 of the Convention. Nature of medical examination and particulars to be included in the medical certificate.* For the last 16 years, the Committee has been requesting the Government to clarify whether certain provisions of the Requirements for Merchant Marine Personnel (RLM-118), as well as Maritime Regulation 10.325(3), regarding medical certification of seafarers apply also to fishers. In its last report, the Government merely indicates that the legal texts in question apply to fishing vessels of 500 gross tons or more. **The Committee observes, in this respect, that the Convention applies to all fishing vessels irrespective of tonnage and therefore requests the Government to take all appropriate measures to ensure that fishers employed on board fishing vessels of less than 500 gross tons are subject to the same medical certification requirements in accordance with the provisions of the Convention.**

In addition, the Committee notes that the Government has issued Marine Notice MLC-002, which implements the medical certification requirements of Standard A1.2 of the Maritime Labour Convention, 2006 (MLC, 2006), providing, in particular, that the maximum period of validity of medical certificates should not exceed two years for seafarers above 18 years of age and one year for those under the age of 18. The Committee recalls that similar provisions are found in Article 12 of the Work in Fishing Convention, 2007 (No. 188), which revises and updates most ILO instruments on fishing, including Convention No. 113. **Noting the Government's indication included in its 2010 report on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), that it is planning to amend its Maritime Law (RLM-107) and Regulations (RLM-108), the Committee asks the Government to take prompt action in order to align its legislation with the requirements of Convention No. 188 regarding medical certification of fishers.**

#### **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 to 9 of the Convention. Fishers' articles of agreement.* **Noting that for the last 30 years the Government has been referring to the forthcoming adoption of new legislation giving effect to the provisions of the Convention, the Committee once more asks the Government to indicate any measures taken to ensure the application of the Convention both in law and in**

*practice. The Government is also asked to specify whether the Liberian Maritime Law (RLM-107), the Liberian Maritime Regulations (RLM-108), and the Marine Notice SEA-002 (Rev.05/12), also apply to fishing vessels.*

*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 implementing the provisions of Parts II, III and IV of the Convention.* The Committee notes that no substantive progress has been made with respect to the specific points on which the Committee has been commenting since 2005. In its latest report, the Government reiterates that draft legislation is being prepared to replace the 1977 Regulations issuing sanitary rules for Soviet vessels and boats and that the new legislation will be in line with the provisions of the Work in Fishing Convention, 2007 (No. 188).

The Committee recalls that it has been drawing the Government's attention to two sets of provisions. Firstly, there are provisions that are currently not given effect by national laws and regulations, such as: the provisions with respect to penalties for non-compliance (*Article 3(2)(d)*); periodical inspection (*Article 5*); watertight and gastight bulkheads (*Article 6(3)*); prohibition of open fires (*Article 8(3)*); sleeping room capacity (*Article 10(9)*); sanitary facilities (*Article 12(2)(c)*); facilities for drying clothes (*Article 12(7), (11)*); sickbay (*Article 13(1)*); and alterations to existing vessels (*Article 17(2)-(4)*). Secondly, there are provisions on which the Committee has requested, but never received information, and therefore, their application in practice remains unclear, for instance: the provisions relating to emergency escapes from crew accommodation, adequate insulation of sleeping rooms and mess rooms, fire prevention/retarding measures, steam and exhaust pipes not through crew accommodation, wall surfaces in sleeping rooms painted in a light colour and kept easily clean (*Article 6(2), (4), (7), (9)-(11), (13), (14)*); heating in operation at all times when practicable (*Article 8(2)*); permanent blue light in sleeping rooms (*Article 9(5)*); sleeping rooms amidships or aft, separate room for each department, construction and size of berths, furniture of sleeping rooms (*Article 10(1), (5), (13)-(26)*); furniture and equipment of mess rooms (*Article 11(7), (8)*); and gas used for cooking (*Article 16(6)*).

*The Committee hopes that the Government will make every possible effort to finalize in the very near future the draft "Requirements for the safety of floating craft and water transport vessels to ensure hygiene and disease control", taking into account all the comments that the Committee has been formulating for a number of years.*

## 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 to 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 requests the Government to supply up-to-date information concerning the fishing industry, including statistics on the composition and capacity of the country's fishing fleet and the approximate number of fishers gainfully employed in the sector.*

The Committee also draws the Government's attention to the new Work in Fishing Convention, 2007 (No. 188), 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 near future.*

## Spain

### **Fishermen's Articles of Agreement Convention, 1959 (No. 114)** (ratification: 1961)

*Articles 3 to 11 of the Convention. Fishermen's articles of agreement.* With reference to its previous comments, the Committee notes the Government's confirmation that the employment relationships of fishers are regulated by the Workers' Statute, and that no other legal provisions apply to them. Regarding the requirement that articles of agreement are to be concluded in writing, pursuant to *Article 3* of the Convention, the Government indicates that section 8 of the

Workers' Statute lists the cases in which the employment contract must be established in writing. These include apprenticeship contracts, part-time contracts and certain fixed-term contracts. Articles of agreement for maritime fishing, however, are not included in this list. The Government also refers to Royal Decree No. 1424/2002 of 27 December 2002 which regulates communication to the public employment services of the content of employment contracts and copies thereof, as well as the use of telematics to this end. However, the Committee notes that the Royal Decree provides only for the communication of the content of employment contracts, without requiring that they be concluded in writing in all circumstances. Section 1 of the Decree, in fact, provides that the obligation for employers to communicate the content of employment contracts concluded by them applies "whether or not these must be formalized in writing". The Government also mentions Royal Decree No. 1659/1998 of 24 July 1998 to apply section 8(5) of the Workers' Statute which deals with information for workers on the main elements of the employment contract. The Committee notes that, while communication of this information is certainly useful and contributes to the protection of the workers, the provisions of this Royal Decree and of section 8(5) of the Workers' Statute do not give effect to the provisions of the Convention regarding the formalities for concluding fishers' articles of agreement and the particulars they must contain. Nor are the legal requirements relating to the crew list and book service, to which the Government also refers, any more likely to ensure implementation of the Convention.

Consequently, the Committee can only note with *concern* that the current legislation does not ensure application of the main provisions of the Convention that address, in particular, the obligation to conclude fishers' articles of agreement in writing and the particulars they are bound to contain. *It urges the Government rapidly to take the necessary measures to bring its legislation into conformity with the Convention, the requirements of which are to a large extent reproduced in the Work in Fishing Convention, 2007 (No. 188), which is the consolidated and up-to-date instrument in this area.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 112** (Liberia, Mauritania, Peru); **Convention No. 113** (Brazil, Bulgaria, Guinea, Kyrgyzstan, Peru, Tajikistan); **Convention No. 114** (France, Mauritania, Slovenia); **Convention No. 125** (Belgium, France, France: French Polynesia, France: New Caledonia, Germany, Panama, Senegal, Syrian Arab Republic); **Convention No. 126** (Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, France, France: French Polynesia, France: New Caledonia, Greece, Kyrgyzstan, Panama, Sierra Leone, Spain, Ukraine).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 113** (Croatia, France); **Convention No. 114** (Guinea); **Convention No. 126** (Denmark).





## 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 that the Government reports do not contain any 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 wishes to invite the Government to request 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 hopes that the Government will make every effort to take the necessary action in the near future.**

### Argentina

#### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1950)**

The Committee notes the Government's indication that, since there are no new provisions relating to the subject in question, reference should be made to information contained in previous reports. The Committee notes that the Government has not supplied the information requested in its previous observation. The Committee is therefore bound to repeat its previous comments on the application of the Convention, which read as follows:

The Committee notes the information contained in the Government's report. It also notes that the provisions of *Article 8 of the Convention*, Safety measures regarding hatch coverings and beams used for hatch coverings; *Article 13, paragraph 2*, Rescue measures in the event of workers falling into the water; *Article 14*, Prohibition against removing or interfering with fencing, gangways, gear, ladders, etc.; and *Article 18*, Reciprocal arrangements, are still not covered by specific regulations as required by the Convention. **The Committee hopes that the Government will adopt the necessary measures in the near future.**

### Congo

#### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1986)**

The Committee notes with *regret* that the report submitted by the Government is identical to the most recent report submitted by the Government in 2007 which formed the basis for the Committee's observation in 2008 repeated in 2009, 2010 and 2011 for lack of a response from the Government. **The Committee urges the Government to solicit technical assistance of the ILO to resolve any problems related to the application of this Convention, and hopes that a report will be supplied for examination by the Committee at its next session. In the meantime and in the absence of any new information, the Committee must, yet again, 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.

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

## Costa Rica

### **Dock Work Convention, 1973 (No. 137) (ratification: 1975)**

The Committee notes with *interest* the information sent by the Government in July 2010 and September 2012 in relation to the observation made in 2009. The Government provides information sent by the Costa Rican Pacific Ports Institute (INCOP) and the Committee for Port Administration and Economic Development of the Atlantic Coast (JAPDEVA).

*Articles 2, 3 and 4 of the Convention. Permanent or regular employment. Registers for all occupational categories of dockworkers.* The Committee notes that INCOP receives reports from private enterprises licensed to operate in the Pacific ports containing lists and supporting documents from the three licensed enterprises specifying the workers who are assigned to port operations. In addition, two other enterprises maintain contracts with various cooperatives or cargo handling enterprises which hire some 900 workers, 70 per cent of whom are workers who were dismissed by INCOP as part of a privatization process which took place in 2006. The three enterprises holding the concessions have indicated that all their staff are employed on a fixed basis and so they do not have a list of registered workers. On the Atlantic Coast, 20 different categories of dockworkers have been identified who have obtained employment stability through being classified as civil service employees.

*Article 5. Cooperation with the social partners.* The Committee notes that since the entry into force of the Puerto Caldera concession, INCOP has held meetings with the concession holders and the cargo handling enterprises with a view to enforcing labour standards. **Please describe in further details the arrangements for cooperation between INCOP and JAPDEVA and the workers' organizations in improving the efficiency of work in ports.**

*Article 6. Safety, health, welfare and vocational training of dockworkers.* The Government indicates in its report received in September 2012 that INCOP and JAPDEVA have planned to provide a list of provisions to be observed in relation to welfare, health, safety and access to vocational and technical training in dock work. In the communication received in July 2010, the three concession holders stated that international standards on dock safety would be adopted as part of a draft code for the management of maritime and dock safety. In the field of training, reference was made to support from international bodies such as the International Maritime Organization, the Central American Commission for Maritime Transport and the Inter-American Committee on Ports.

**The Committee welcomes the efforts made by the Government to make progress in the application of the Convention. The Committee invites the Government to provide more information in its next report on the subjects**

raised in the present observation, including up-to-date information on cooperation between workers' and employers' organizations as well as on the results achieved in a tripartite context to improve the efficiency of dock work (Part V of the report form).

## Ecuador

### Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (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:

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).**

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

## France

### Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1985)

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 supplied by the Government concerning the adoption of new regulations designed to improve the application of the Convention, particularly Decree 2006-892 of 19 July 2006 issuing safety and health regulations applicable in cases where workers are exposed to noise-related hazards; the Order of 1 March 2004 concerning the inspection of lifting appliances and gear; the Order of 2 March 2004 concerning maintenance of records for lifting appliances; and the Order of 3 March 2004 concerning the close inspection of tower cranes. The Committee also notes the Government's reply concerning the provisions giving effect to *Article 31(2) of the Convention* with regard to the safety of workers lashing or unlashng containers. The Committee is also aware of the adoption of Act No. 2008-660 of 4 July 2008 concerning dock reforms and the texts for the implementation thereof. It notes the amendments relating to dock development and the organization of dock work and also the implementation of a new mode of governance of major seaports.

With reference to its comments in 2002 and 2007, the Committee notes that the Government's report does not contain any information on the measures taken to ensure the application of certain provisions of the Convention. The Committee is therefore bound to repeat its previous requests to the Government, which read as follows:

**Article 20(1) to (4).** *Safety measures to be taken where power vehicles operate in the hold; securing of hatch covers; ventilation regulations; safe means of escape from bins or hoppers when dry bulk cargo is being loaded or unloaded.* With reference to its previous comments, the Committee notes that the Government's report contains no information on the measures taken to ensure the application of this provision of the Convention. **The Committee once again requests the Government to provide detailed information on the measures taken or envisaged with a view to applying the provisions of this Article.**

**Article 26(1) to (3).** *Mutual recognition of arrangements made by Members for testing and examination.* The Committee notes the information contained in the Government's report that there is not a principle of general recognition of the international equivalence of testing. However, the Government indicates that a principle of equivalence is implicit under the European Treaty. **The Committee requests the Government to provide information on the measures adopted to ensure the mutual recognition of arrangements made by other Members for the testing, examination, inspection and certification of lifting appliances and items of loose gear forming part of a ship's equipment.**

**Article 28.** *Measures to ensure that rigging plans are carried on board every ship.* With reference to its previous comments, the Committee notes that the Government's report contains no information on the measures taken to give effect to this Article of the Convention. **The Committee once again requests the Government to provide detailed information on the measures taken or envisaged with a view to applying the provisions of this Article.**

*In view of the possible practical repercussions of the abovementioned reforms on safety and health in dock work, the Committee requests the Government to supply all relevant information concerning the impact of all the new legislative provisions and regulations concerning the application of the Convention, particularly Articles 4, 5, 7 and 31.*

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

## 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 must therefore repeat its previous observation 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.*

## New Zealand

### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1938)**

The Committee notes the information provided in the Government's report, including the attached comments by Business New Zealand and the New Zealand Council of Trade Unions (NZCTU) on the application of the Convention in

law and in practice. In particular, the Committee notes the response by the Government, which indicates that the Health and Safety in Employment (HSE) Act 1992 requires employers to take all practicable steps to ensure the safety of workers while at work, and that compliance with the HSE Act is consistent with the intent of this Convention. The Committee notes that, in line with *Article 1* of the Convention, the HSE Act covers all people working ashore, as well as those working on board ships. The Committee notes however, that the specific provisions of the Convention are reflected in the national Code of Practice for Health and Safety in Port Operations (Revised May 2004), which the Government has indicated is a statement of preferred work practice and provides only a recommended means of compliance with the requirements of the HSE Act. ***The Committee asks the Government to indicate the measures taken to ensure that the requirements of the Convention are enforced in practice, and penalties imposed for any breaches.***

In addition, the Committee notes the comments by the NZCTU concerning health risks associated with the work of crane and forklift operators (CFOs), and in particular concerning the occurrence of musculo-skeletal discomfort (MSD). The Committee notes that this information falls outside the scope of this Convention, but may be relevant in relation to the Occupational Safety and Health Convention, 1981 (No. 155). The Committee will examine these elements of the NZCTU communication, and any reply the Government wishes to make in this regard, along with the Government's next report concerning Convention No. 155.

*Article 10 of the Convention. Sufficiently competent and reliable persons shall be employed.* The Committee notes the comments by the NZCTU in relation to the recent move by New Zealand's port industry to "casualise" the workforce through the use of contractors. The NZCTU alleges that this move has resulted in a decline in training, or the provision of condensed training, and an increase in accidents, some fatal, mainly due to human error. The NZCTU further points to research and informal reports which suggest that there are higher accident and death rates at ports having contracted out stevedoring work. According to the NZCTU, there were three work related fatalities at the Port of Tauranga in 2010 and 2011. Worker error was a factor in all three fatalities and concerned two contractors and a seafarer. ***The Committee asks the Government to provide information on the measures taken to ensure that only sufficiently competent and reliable persons shall be employed, as required by Article 10 of the Convention, and in particular to respond to the comments by the NZCTU.***

*Article 12. Precautions deemed necessary to ensure the proper protection of workers.* The Committee notes the comments by the NZCTU concerning the use of methyl bromide in timber defumigation operations at some ports, and in particular its association with an increased risk of motor neuron disease (MND). The NZCTU alleges that five former workers from the Port of Nelson are known to have died from MND. ***The Committee asks the Government to provide further information on how national laws or regulations ensure the proper protection of workers, with respect to the abovementioned comments by the NZCTU.***

*Article 17 and Part V of the report form. Application in practice and an efficient system of inspection.* The Committee notes the information provided by the Government concerning a 2007 project by Maritime New Zealand to reduce short and long term injuries in the stevedore workforce, when working on board ships. The Government also indicates that due to a continuing concern about the number of significant failures of lifting appliances during cargo operations on ships while they are in New Zealand ports, Maritime New Zealand conducted a Focused Inspection Campaign (FIC) in this area in 2006 as part of their routine Port State Control inspections. The FIC highlighted that there were a relatively high number of non-compliances, especially with inspection and maintenance procedures, and that these findings were submitted to the International Maritime Organization (IMO). The Committee welcomes the information that a further submission to the IMO, by the Government, with co-sponsorship from the Governments of Chile, Japan, Norway and the Republic of Korea, has been made and proposes the inclusion of a new output aimed at developing requirements for the construction and installation of on board lifting appliances, and thereby mirroring the requirements under this Convention and the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) within the Safety of Life at Sea Convention (SOLAS). ***The Committee asks the Government to continue to provide information on the application of the Convention in practice, and in particular on any progress in relation to the work being undertaken by the IMO's subcommittee on ship design and equipment, currently scheduled for March 2013.***

*Inspection visits and investigations in ports.* The Committee notes that the NZCTU has again raised concerns regarding the lack of common practice concerning random inspections. The NZCTU also alleges that there has not been any marked increase in independent investigations of accidents by Maritime New Zealand or the Department of Labour, other than those initiated following a fatality or severe injury. The Committee further notes the comments by the NZCTU concerning the lack of mandatory requirements to inspect mooring ropes as part of the Port State Control inspections, following the death of a port worker as a result of a snapped mooring rope, and that in at least five other serious accidents between 1999 and 2009, poor mooring rope inspection, maintenance or operation led to serious injury or death. ***The Committee asks the Government to provide further information in regard to the comments raised by the NZCTU concerning labour inspection in ports.***

*Inspection service resources.* The Committee welcomes the information provided by the Government that in May 2012, an additional NZ\$37 million of funding for workplace health and safety was announced for the next four years, and that amongst other things, this funding will be used to increase the number of front-line health and safety inspectors by 20 per cent. ***The Committee asks the Government to provide more detailed information on labour inspections in ports, including extracts from inspectors' reports, and, if such statistics are available, information regarding the number of***

*workers covered by the Convention, the number and nature of contraventions, and the number, nature and causes of accidents reported.*

*Consultation and action on safety and health issues.* The Committee notes Part 2A of the HSE Act, attached to the Government's report, which provides for employee participation in processes relating to health and safety in the place of work. The NZCTU has expressed concern about the reluctance by port management to consult with workers on changes to port operations and facilities that have health and safety implications. The NZCTU notes that the Government has followed up individual complaints concerning inadequate safety compliance at ports, but that more general preventive action is warranted. ***The Committee asks the Government to indicate any measures taken to ensure that Part 2A of the HSE Act is applied in ports, and whether any general preventive action on safety compliance at ports is being considered.***

## Sweden

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1980)**

The Committee notes the brief report submitted by the Government including a reference to information provided in the context of its application of the Dock Work Convention, 1973 (No. 137).

*Comments by the Swedish Transport Workers' Union (STUW).* With reference to observations submitted by STUW in 2002, both in relation to Convention No. 137 and the present Convention, the Committee notes that the Government agrees with STUW that prolonged stress has negative health consequences; that if, in addition, the workload is so heavy that the provisions cannot be implemented, there is a risk that accidents occur; and that risk assessments are important to prevent ill health and accidents. ***The Committee would be grateful if the Government would provide further information on whether and to what extent stress has been taken into account in the context of risk assessments made in the context of dock work in Swedish ports and the impact of such measures.***

*Part V of the report form. Application in practice.* The Committee notes the information provided regarding inspections carried out in the ports of Göteborg, Uddevalla, and Varberg, the requests for action to be taken and the statistical data concerning accidents at work for the period 2007–11, that are attached to the report of the Government on Convention No. 137. However, it notes that on the basis of the information provided, it is not possible to determine the number of accidents that are related to dockworkers. ***In the light of the foregoing, the Committee requests the Government to provide further information and the actions taken as a follow-up to the reported inspections carried out in the ports of Göteborg, Uddevalla and Varberg; the number of occupational accidents and diseases reported among dockworkers for the years 2007–11 and onwards; and any further relevant information on the manner in which the Convention is applied in the country.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 27** (Angola, Australia, Austria, Bulgaria, Burundi, Canada, Czech Republic, Estonia, France, Germany, Honduras, India, Indonesia, Iraq, Kenya, Kyrgyzstan, Lithuania, Mexico, Nicaragua, Norway, Pakistan, Papua New Guinea, Peru, Spain, Uruguay, Bolivarian Republic of Venezuela, Viet Nam); **Convention No. 32** (Belgium, Bulgaria, China, China: Hong Kong Special Administrative Region, Honduras, India, Kenya, Slovenia, Tajikistan, Uruguay); **Convention No. 137** (Afghanistan, Australia, Brazil, Cuba, Egypt, Finland, France, Iraq, Kenya, Mauritius, Nigeria, Norway, Poland, Portugal, United Republic of Tanzania, Uruguay); **Convention No. 152** (Cuba, Finland, Germany, Iraq, Italy, Lebanon, Republic of Moldova, Netherlands, Seychelles, Turkey).

The Committee noted the information supplied by the following States in answer to a direct request with regard to **Convention No. 32** (Bosnia and Herzegovina, United Kingdom: Isle of Man).





## Indigenous and tribal peoples

### Argentina

#### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2000)**

*Communication from the Confederation of Workers of Argentina (CTA). Eviction of communities. Consultations required by the Convention.* The Committee notes the reply sent in March 2012 by the Government to the observations from the Confederation of Workers of Argentina (CTA) received in August 2011. The CTA highlighted the violent evictions of indigenous communities from the territories that they traditionally occupy in the provinces of Formosa (Toba-Qom Navogoh, La Primavera community), Rio Negro (the Paichil Antriao Mapuche community), Tucumán (the Chuschagasta and India Quilmes communities), situations that were referred to in the observation made by the Committee of Experts in 2011. The Government's reply does not contain any information relating to the abovementioned events, but the National Institute for Indigenous Affairs (INAI), in its report, recalls its functions as a decentralized body with indigenous participation which operates within the Ministry of Social Development. The INAI draws attention to the three fundamental laws for the effective recognition of the rights of indigenous peoples (Act No. 26160 of 2006 concerning the emergency relating to ownership of lands traditionally occupied by indigenous communities and its extension by means of Act No. 26554 of 2009; Act No. 26206 of 2006 concerning national education, and Act No. 26522 of 2009 concerning audiovisual communication services). The INAI indicates that by means of Decree No. 700 the Commission for Analysis of the Implementation of Indigenous Community Ownership was set up in May 2010. In October 2010, the Commission submitted a preliminary bill to the Ministry of Social Development. The Committee also notes the fact that the INAI, with the participation of indigenous organizations and the Council for Indigenous Participation (CPI), held a university event in November 2011 which focused, among other things, on the need to complete the territorial survey and the demarcation of indigenous community territories throughout the country, promote the dispatch of the draft legislation concerning indigenous community ownership and also promote the establishment of a commission for preparing draft legislation on consultation and participation to enable the application of Convention No. 169. In its new observations received in August 2012, with a contribution from the Observatory for the Human Rights of Indigenous Peoples (ODHPI), the CTA indicates that the legislative process is under way for a preliminary draft national Civil and Commercial Code, which includes provisions concerning indigenous community ownership. The CTA states that there is no connection between the provisions of the preliminary draft that is currently passing through the legislative process and those that were prepared by the commission established in May 2010. In the report received in November 2012, the Government indicates that the reform of the Civil and Commercial Code incorporates the right to community possession and ownership of lands traditionally occupied by indigenous communities, the right to consultation and participation, and respect for forms of internal organization in accordance with the world view of indigenous peoples. The Committee notes that a bicameral commission of the National Congress is holding public hearings to debate the reform in various provinces of the country and the INAI is ensuring effective indigenous participation in the hearings. ***The Committee repeats its request to the Government to provide detailed information in the report due in 2013 on the steps taken to investigate the allegations of violent evictions and deaths in the indigenous communities referred to in the observation made in 2011. The Committee also requests the Government to provide information enabling it to examine in detail how it has been ensured that indigenous peoples have been consulted whenever consideration has been given to legislative or administrative measures which may affect them directly (Article 6(1)(a) of the Convention). The Committee hopes that the Government will indicate the manner in which a new Civil and Commercial Code has ensured that full effect is given to the provisions of the Convention relating to lands traditionally occupied by indigenous peoples and to natural resources pertaining to their lands.***

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.***

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution). Consultations at national level in the CPI. Register of indigenous communities. Regularization of lands.* As follow-up to the request made by the Governing Body in November 2008 further to a representation submitted

in August 2006 by the Educational Workers' Union of Río Negro (UNTER) (GB.303/19/7), the Committee requested information, in the observation made in 2011, on the progress of the issues that were pending at national level and in the Río Negro province. The Committee notes the partial reply provided by the Government, by means of the report received in November 2012, to some of the issues raised at national level. The INAI recalls that the CPI is a forum for participation and consultation which has adopted regulatory statutes governing its operation and which has expanded its membership to some 113 representatives. The National Programme for Identification of the Status of Indigenous Community Lands (Re.Te.C.I.) holds bimonthly meetings with the National Committee of the CPI, composed of 25 representatives at the regional and national levels. Furthermore, the Follow-Up Committee of the National Forum for Territorial Organizations of Original Peoples (ENOTPO) is working in conjunction with the Re.Te.C.I. National Programme, in which eight representatives participate at the regional and national levels. The ENOTPO is an umbrella organization for some 40 indigenous territorial organizations. Pursuant to Act No. 26160 and Re.Te.C.I., 950 communities have been identified for the purposes of recording their land status and 367 communities and over 3 million hectares have had their status recorded. A total of 328 indigenous communities have legal personality that has been registered in the National Register of Indigenous Communities (RENACI), 337 communities are registered with provincial organizations in the context of agreements concluded with the INAI, and some 600 communities are registered with other competent provincial organizations. The Government states that there have been no cases to date of indigenous communities for which registration of their legal personality in the national register has been refused. The Committee also notes the list of various bills relating to subjects covered by the Convention which are undergoing the legislative process but have not yet been approved. ***The Committee invites the Government to include with its next report a copy of the regulations of the CPI and a summary of the administrative and legislative measures which have been the subject of the consultations required by the Convention in the abovementioned institutional context.***

*Río Negro province. Consultation, participation and traditional activities of indigenous peoples.* The Committee notes the information sent in the report received in November 2012 indicating that in the province of Río Negro some 320,000 hectares of land have been regularized in favour of indigenous communities. In the observation made in 2011, it was recalled that the Mapuche and Mapuche–Tehuelche peoples were organized through the Coordinating Committee of the Mapuche People's Parliament, which proposed candidates for the positions of advisers and presidents of the Council for the Development of Indigenous Communities (CODECI). The Government also indicated that indigenous stockbreeders were able to have access easily to marks and signs certificates and carry on their activities under conditions of equality. With reference to marks and signs, the Government indicated that it was difficult to grant ownership of marks and signs where no title to the lands had been obtained, resulting in difficulties in the circulation of livestock for sale. ***The Committee refers once again to the conclusions and recommendations of the report adopted in November 2008 by the Governing Body (document GB.303/19/7), and requests the Government to include in its next report up-to-date information on progress made regarding the regularization of indigenous community property and on the manner in which the procedures for consultation and participation provided for in the Convention are being implemented at provincial level. The Government is also requested to indicate whether the regularization of lands has facilitated the grant of certificates of marks and/or signs (livestock ownership titles), since stockbreeding is a traditional activity of the Mapuche people (Article 23).***

*Coordinated and systematic policy.* The Committee notes that, by Decree No. 791/2012 of May 2012, the INAI was again authorized to designate a delegate for each of the ethnic groups of the country in order to form the Coordination Council already provided for under section 10 of Act No. 23.302 of November 1985 concerning indigenous policy and support for aboriginal communities. Moreover, the Government emphasizes, in the report received in November 2012, that the inclusion of the right to consultation and participation in the draft revised Civil and Commercial Code would entail the need to adopt a special law regulating indigenous consultation and participation. ***The Committee requests the Government to supply information in its next report on any progress made regarding the regulation of the right to participation and consultation in accordance with the Convention. The Committee again requests the Government to attach copies of the records of the meetings of the Coordination Council. The Committee also requests the Government to indicate how indigenous participation councils take part in the INAI decision-making process. The Committee hopes that the Government will provide details of the distribution of responsibilities and the coordination mechanisms established between the Coordination Council and the Advisory Council (provided for in Act No. 23302 of 1985), on the one hand, and the CPI (provided for in Act No. 26160 of 2006), on the other (Articles 2 and 33 of the Convention).***

*Article 14. Lands.* The Committee notes the detailed information sent by the Government regarding the land ownership regularization processes which have been undertaken mainly in Jujuy province (over 1.6 million hectares) and in the provinces of Río Negro (320,000 hectares), Chubut (104,893 hectares) and Chaco (320,000 hectares). ***The Committee invites the Government to include up-to-date information in its next report on the number of beneficiary communities and the surface area of lands regularized in the context of the National Programme for Identification of the Status of Indigenous Community Lands and the manner in which the participation of the communities concerned by the land status identification process has been ensured. The Government is also requested to include information on the land regularization processes which have been undertaken or are pending in other provinces concerned (Buenos Aires, Entre Ríos, Formosa, Neuquén, Salta, Tucumán and Tierra del Fuego, as mentioned by the Government in its report), and also on any difficulties encountered in completing the recognition of indigenous community possession and ownership in the country.***

*The Committee invites the Government, when preparing the report due in 2013, to consult the social partners and indigenous organizations with regard to the measures taken to give effect to the Convention. The Committee hopes that the Government will submit a report in 2013 which contains specific information on all the other subjects referred to in its observation and direct request of 2011 and on the results achieved by the measures taken to give effect to each of the provisions of the Convention.*

## Plurinational State of Bolivia

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1991)**

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.***

*Part VIII of the report form. Communications from indigenous peoples.* The Committee notes with **regret** that the Government has not supplied its comments on the observations from two workers' confederations which were sent to it in September and October 2011. The International Trade Union Confederation (ITUC) drew the Committee's attention to a document from the Democratic Bolivian Assembly rejecting the construction of the Villa Tunari – San Ignacio de Moxos highway. The Bolivian Workers' Federation (COB) submitted a document to denounce the lack of prior consultation and the criminalization of social protest in Bolivia. The COB expressed its support for the declaration from the Ayllus y Markas del Qullasuyu National Council (CONAMAQ) signed in Trinidad on 17 August 2011. The Committee notes that CONAMAQ, among other things, announced its rejection of the construction of the Villa Tunari – San Ignacio de Moxos highway since it would affect the TIPNIS (Isiboro Sécure Indigenous Territory and National Park) territories and because the right to free and informed prior consultation had not been observed. CONAMAQ demanded that all the ancestral territories be restored and title thereto be granted and that the corresponding territorial compensation be made. CONAMAQ called for the adoption of a law concerning the right to consultation and participation in the benefits deriving from mining and other natural resources. CONAMAQ requested access to the Development Fund for Indigenous and Original Peoples and Campesino [farming] Communities to be extended, with the inclusion of gender mainstreaming, to other indigenous communities. CONAMAQ asked that, in the 2011 census, new ancestral nations and indigenous peoples that predated the colonial era, including the Afro-Bolivian people, should be identified by name, so as to consolidate the existence of indigenous peoples in the Plurinational State of Bolivia.

The Committee understands that the contract to construct the Villa Tunari – San Ignacio de Moxos highway was awarded in 2008 and construction began in 2009. In February 2009, a representative indigenous organization – the TIPNIS Subcommittee – was recognized by the Government as the sole collective owner of the territory with a total surface area of 1,091,656 hectares. The Committee observes that further to the “VIII Grand Indigenous March” which took place in August–September 2011 and in accordance with sections 1, 2, 3 and 4 of Act No. 180 of 24 October 2011 on the Protection of the Indigenous Territory and National Park Isiboro Sécure, the TIPNIS was given socio-cultural and natural heritage status and recognized as an area of environmental conservation and historical reproduction and the habitat of the Chimán, Turacré and Mojeño-Trinitario indigenous peoples. It was also stipulated that neither the Villa Tunari – San Ignacio de Moxos highway nor any other highway would cross the TIPNIS. However, by means of Act No. 222 of 10 February 2012 on the Consultation of Indigenous Peoples of TIPNIS, the three indigenous communities of the TIPNIS were invited to attend consultations. Section 4 of Act No. 222 provides that the purpose of the consultations is to reach an agreement between the State and the three indigenous peoples on two matters: “(a) to determine whether or not the TIPNIS should be a protected area, in order to promote the development of the activities of the Mojeño-Trinitario, Chimán and Yuracaré indigenous peoples, and also the construction of the Villa Tunari – San Ignacio de Moxos highway”; (b) to establish the means of ensuring the protection of the TIPNIS, including the immediate eviction of illegal settlements within the TIPNIS. By means of Act No. 240 of 10 May 2012, Act No. 222 was amended, establishing that the maximum period from start to finish of the consultations should be 210 days following the promulgation of Act No. 222 (i.e. the consultations should be concluded on 7 September 2012).

The Committee observes that the Plurinational Constitutional Court issued ruling No. 0300/2012 dated 18 June 2012 declaring the constitutionality of the invitation to attend consultations issued to the TIPNIS indigenous peoples (section 1

of Act No. 222) and of the functions of the Inter-Cultural Agency for Democratic Consolidation (SIFDE), tasked with observation and monitoring of the consultation process (section 7 of Act No. 222). The Court declared the conditional constitutionality of section 1 of Act No. 222 in relation to the phrase "... and establish the content of this process [of free and informed prior consultation with the TIPNIS indigenous peoples] and its procedures" and the other provisions [sections 3, 4(a), 6 and 9] of Act No. 222. The Plurinational Constitutional Court stated that the consultations are conditional on being coordinated in observance of the horizontal relationship between the State and the TIPNIS indigenous peoples and urged the legislative and executive authorities to draw up an agreed joint protocol with the indigenous peoples with the full participation of their institutions. The Committee stresses the importance of developing appropriate and permanent mechanisms and procedures for the consultation of the peoples concerned, considering that the purpose of the Convention is to ensure the participation of indigenous peoples, through their representative organizations in decision-making on issues, programmes and policies that affect their interests. ***The Committee requests the Government to indicate how it has ensured compliance with the Convention in the context of the situation generated by the construction of the road Villa Tunari – San Ignacio de Moxos. The Committee hopes that mechanisms for dialogue have been established which enjoy the confidence of the parties and which, through good faith negotiations in accordance with the Convention, have enabled appropriate solutions to be found to the situation arising from the construction of the Villa Tunari – San Ignacio de Moxos highway. The Committee requests the Government to include detailed information in its next report on the issues raised in the present observation and on the manner in which account has been taken of the interests and priorities of the indigenous peoples concerned. The Committee invites the Government, when preparing its next report, to consult the social partners and indigenous organizations on the measures taken to give effect to the Convention. The Committee hopes that the Government will submit a report in 2013 containing specific information on the issues raised in the comments made in 2009 and on the results achieved by the measures taken to give effect to each of the provisions of the Convention.***

## Brazil

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2002)***

The Committee notes that the Government's report received in September 2012 contains up-to-date information relating to the observation made in 2011. In addition, the Government sent detailed communications in April and May 2012 providing information on the process for the regulation of prior consultation. ***The Committee invites the Government, when preparing its next report, to consult the social partners and indigenous organizations on the measures taken to give effect to the Convention (Parts VII and VIII of the report form). The Committee hopes that the Government will submit a report in 2013 containing updated information on the issues raised in the present observation and in the observation made in 2011 and on the results achieved by the measures taken to give effect to each of the provisions of the Convention.***

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted comments in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.***

*Regulation of consultation mechanisms.* The Committee notes with *interest* the publication in January 2012 of Inter-ministerial Order No. 35 of the General Secretariat of the Office of the President of the Republic and the Ministry of Foreign Affairs establishing an inter-ministerial working group (GTI) for the formulation of the proposed regulations on the right to consultation. In July 2012, new government institutions (the Ministry of Culture and the Chico Mendes Institute) were invited to participate in the process and mechanisms were set up for dialogue between the GTI and civil society. A Facilitation Committee was created composed of 12 indigenous representatives and 12 Quilombola representatives with an equal number of members representing government bodies (24 representatives). The GTI intends to maintain an ongoing and high-quality dialogue with indigenous peoples, Quilombola communities, other traditional communities and civil society. Under the auspices of the GTI, various activities were carried out with indigenous leaders and new entities were included in the consultation process. The Government has provided information on the consultations planned for 2013 and intends to prepare proposed regulations for 2014. ***The Committee invites the Government to include in its next report detailed information on the progress of the consultations held to give effect to Articles 6, 7, 15 and 16 of the Convention.***

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO). Legislation relating to public forests.* In its 2011 observation, the Committee noted the report of the Governing Body (document GB.304/14/7, March 2009) on a representation submitted in October 2005 by the Union of Engineers of the Federal District (SENGE/DF). In this representation, it was alleged that no consultations had been held with indigenous peoples, as required by the Convention, with regard to draft legislation on the administration of public forests. In the report received in September 2012, the Government indicates that the draft legislation became Act No. 11284/2006 and that Decree No. 7747 of 5 June 2012 established a National Policy for the Environmental and Territorial Management of Indigenous Lands (PNGATI). The Government indicates that this is an innovative process of consultation with indigenous peoples which will enable them to strengthen their effective contribution to the conservation of biodiversity through the traditional community management of natural resources. ***The Committee refers to the recommendations made by the Governing Body in paragraph 62 of document GB.304/14/7 of March 2009 and invites the Government to include up-to-date information in its next report which will enable it to examine:***

- (a) the measures adopted to complement the consultation process concerning the impact of timber concessions envisaged in the Act concerning the administration of public forests on the indigenous peoples likely to be affected, taking account of Article 6 of the Convention and the conclusions of the tripartite committee set out in paragraphs 42–44 of the report;***
- (b) the regulatory and practical measures planned to implement the consultation process laid down in Article 15(2) of the Convention, including the procedural requirements stipulated in Article 6, before licences are granted for timber exploration and/or exploitation as envisaged in the Act concerning the administration of public forests;***
- (c) the manner in which it is ensured that the consultation process required under Article 15 of the Convention is implemented in relation to the lands referred to in paragraph 52 of the report, whatever their legal status, provided that they comply with the requirement set out in Article 13(2) of the Convention (lands which the peoples concerned occupy or otherwise use);***
- (d) the manner in which it is ensured that the indigenous peoples participate in the formulation, implementation and evaluation of plans and programmes related to the logging activities referred to above, including the determination of the lands to be excluded under the terms of section 11(IV) of the Act concerning the administration of public forests (Article 7(1) of the Convention);***
- (e) the manner in which it is ensured that, in accordance with Article 7(3) of the Convention, studies are carried out, in cooperation with the peoples concerned, with a view to assessing the social, spiritual and environmental impact on the indigenous peoples concerned of the logging activities authorized by the Act;***
- (f) the manner in which it is ensured that the indigenous peoples affected by logging activities participate, wherever possible, in the benefits of such activities, and receive fair compensation for any loss or damage which they may sustain as a result of such activities;***
- (g) the manner in which it is ensured that logging activities do not affect the rights of ownership and possession laid down in Article 14 of the Convention; and***
- (h) any special measures adopted to safeguard the persons, institutions, property, labour, cultures and environment of the indigenous peoples affected by logging activities.***

*Relocation of Quilombola communities (municipality of Alcantara, State of Maranhao).* With reference to the observations that have been made for many years, the Government provided further information in September 2012 on the establishment of the bi-national enterprise Alcantara Cyclone Space (ACS) on lands traditionally occupied by Quilombola communities. The Government recalls that in the Technical Study on Identification and Demarcation of the Quilombola Territory, published in the *Diario Oficial* in November 2008, around 78 million hectares were attributed to 3,350 Quilombola families. Moreover, the Palmares Cultural Foundation issued a technical opinion in 2010 calling for all the direct and indirect impacts associated with the project to be identified and for measures to be taken to mitigate and compensate for the impact of the project on the Quilombola communities. In the framework of the legal action taken by the Office of the Federal Attorney-General in August 2003, alleging that the relocation of the Quilombola population for the construction of the Cyclone-4 complex had overlooked the rights of the communities affected, the federal Government convened a conciliation hearing on 6 March 2009, during which the ACS enterprise formally recognized the land rights of the Quilombola communities of Alcantara and accepted that the operations of the Cyclone-4 complex would be limited to the surface area occupied by the launch base. The Committee notes that, in October 2011, in the context of that legal action, the federal Government asserted that the process of the demarcation of the lands had not yet been completed and, according to the indications provided in the latest report, the legal process is following its course. ***The Committee requests the Government to continue providing information on current legal actions. It hopes that the Government will provide more specific information in its next report on the measures that guarantee the effective protection of the rights of Quilombola communities to the lands that they traditionally occupy in the municipality of Alcantara (Article 14). Please indicate whether Quilombola communities have been removed from their usual lands, and the measures taken for their relocation and compensation (Article 16). As requested in the report form, please describe the steps taken in that case to obtain their free and informed consent.***

*Belo Monte hydroelectric plant (Pará State).* In its previous comments, among other points related to the construction of a hydroelectric plant, the Committee noted that the Inter-American Commission on Human Rights had issued precautionary measures on 1 April 2011 (MC-382-10), calling for the suspension of the licensing process until certain minimum conditions had been met relating to the consultation of the indigenous peoples affected. Furthermore, a federal court in the State of Pará ordered a precautionary measure in September 2011 prohibiting the construction company from making any alterations to the river bed affected by the construction of the hydroelectric plant. In the report received in September 2012, the Government indicates that the surface that would be flooded by the project has been reduced from 1,225 square kilometres to 516 square kilometres. In contrast with the projects that were designed in the 1980s and 1990s, the Government indicates that indigenous lands would not be flooded. The National Foundation for Indigenous Affairs (FUNAI) held 42 meetings with indigenous communities between December 2007 and October 2009, as well as other activities to provide information on the environmental impact of the project. The FUNAI is intervening to ensure that the concerns of the communities affected are taken into account by the enterprise responsible for the project and that relevant information on the project is disseminated. The Government also recalls that the Supreme Labour Court authorized the continuation of work on the hydroelectric plant. ***The Committee requests the Government to continue providing information on current legal actions in relation to the Belo Monte hydroelectric plant. It invites the Government to indicate the manner in which the effective protection is ensured of the rights of indigenous communities to the lands that they traditionally occupied and which are allocated for the construction of the hydroelectric plant (Article 14). As requested by the report form, please indicate whether steps have been taken for the relocation and compensation of the communities affected if they have been removed from their traditional lands and describe in particular the steps taken in that case to obtain their free and informed consent (Article 16).***

*Transposition of the San Francisco river.* The Committee notes the information provided by the Government in the report received in September 2012 on the measures adopted by the FUNAI to consult and inform the indigenous peoples that may be affected by the project for the transposition of the San Francisco river (PIRSF). The FUNAI had the opportunity to undertake studies and programmes for the communities liable to be affected by the impact of the project. ***The Committee invites the Government to provide with its next report a copy of the “Prognóstico das Modificações no Cenário Sociocultural dos Grupos Indígenas”, the study that identified the principal problems in the Truká, Tumbalalá, Pipipan and Kambiwá lands. Please indicate the manner in which the indigenous peoples concerned participated in the studies and programmes undertaken by the FUNAI and how their interests and priorities have been taken into account. The Committee hopes that the Government will also include information on current legal actions and, in particular, on the decision on the constitutionality of the project for the transposition of the San Francisco river, which is currently before the Federal Supreme Court of Justice.***

*Construction of a hydroelectric plant on the Cotingo river.* The Government recalls, in the report received in September 2012, that the project for the construction of a hydroelectric plant on the Cotingo river, located on indigenous land at Raposa Serra do Sol (Roraima State), is still awaiting authorization by Congress. The Committee notes that, even though a draft Legislative Decree is under examination, the hydroelectric plant is not referred to in the National Energy Plan 2030 or in the Ten-Year Plan for Energy Expansion. ***The Committee once again requests the Government to ensure that any projects affecting indigenous lands are subject to full consultation with indigenous peoples and that their views, priorities and interests are taken into account when decisions are taken. The Committee reiterates the hope that the peoples concerned will be able to cooperate in the impact studies that are carried out in accordance with Article 7 of the Convention. The Committee invites the Government to provide detailed information in its next report on any developments in this respect.***

*Mining on the indigenous lands of the Cinta Larga people.* The Government states that the Laje garimpo (small-scale mine), from which it had been necessary to expel intruders who had violated the rights of the indigenous community, has been closed since March 2012. The Committee notes that joint measures were taken by the FUNAI and the federal police to investigate the situation in the garimpo. ***The Committee invites the Government to continue providing information on the measures taken to protect the Cinta Larga indigenous communities. Please also provide information on the findings of the investigations carried out by the federal police and the penalties ordered in proven cases of intrusion (Article 18).***

*Situation of the Guaraní Kaiowá peoples in Mato Grosso do Sul.* *Guaraní M'byá community in the municipality of Eldorado do Sul (Rio Grande do Sul State).* The Government indicates that at a meeting coordinated by the FUNAI and held in Dourados (Mato Grosso do Sul) on 28 November 2011, the Office of the Federal Attorney-General, the Human Rights Secretariat of the Office of the President and the General Secretariat of the Office of the President of the Republic discussed strategies to overcome the legal obstacles created by non-indigenous agricultural landowners and to find solutions to speed up pending cases concerning indigenous lands. The FUNAI published studies recognizing the traditional occupation of the Panambi – Lagoa Seca indigenous territory by the Guaraní Kaiowá peoples. In addition, police presence in the region was increased in order to protect the indigenous communities. ***The Committee invites the Government to continue providing information on the demarcation of the lands traditionally occupied by indigenous communities in the southern cone of Mato Grosso do Sul and on the results achieved by the public security plan to ensure the physical integrity and security of the indigenous communities in the region. Please also provide information in the next report on the situation of the Guaraní M'byá community in the municipality of Eldorado do Sul referred to***

*in the comments by the Workers' Union of the Federal University of Santa Catarina (SINTUFSC), which were forwarded to the Government in November 2008.*

*Article 14. Demarcation and titling of lands for the Quilombola communities.* The Government has supplied up-to-date information on the initiatives taken by the National Institute on Settlement and Agrarian Reform (INCRA) to conduct 1,167 land certification processes for the Quilombola communities. The Committee notes that 121 titles were issued, enabling the certification of nearly 1 million hectares for 109 territories, 190 communities and nearly 12,000 families. Nearly half of these territories are located in Pará State. The Palmares Cultural Foundation (FCP), associated with the Ministry of Culture, is participating in the process of self-identification of the Quilombola communities. The FCP is supporting 154 court cases concerning 56 remaining Quilombola communities in 19 states in the country. According to the Government's report, the regulations on the right of ownership sometimes makes it difficult for the communities to obtain definitive ownership title. The Committee notes that a Federal Supreme Court of Justice ruling is pending on the constitutionality of Decree No. 4887/2003 of 20 November 2003 regulating the procedure for the demarcation and titling of lands for the remaining Quilombola communities. ***The Committee invites the Government to continue providing information on this matter.***

## Chile

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2008)***

With reference to the comments made in 2010, the Committee notes the replies provided by the Government in September and November 2011, and the additional information provided in September, October and November 2012. Furthermore, the Committee notes the content of the observations sent by the Single Central Organization of Workers (CUT), the National Confederation of Artisanal Fishers of Chile (CONAPACH) and the National Confederation of Unions of Bakery Workers (CONAPAN), which were forwarded to the Government in September, October and November 2010. CONAPACH and CONAPAN provided a detailed alternative report from the Aymara people. The CUT forwarded a detailed alternative report prepared in the Araucanía region, as well as documentation prepared by the Coordinating Unit of Mapuche Organizations and Communities from the Araucanía region and the Pelón Xaru Mapuche Nation Peoples Culture Centre. The CUT forwarded specific information from the Kawésqar indigenous community located in Puerto Edén, the Rapa Nui people and representatives of urban Mapuche organizations. In the report received in September 2011, the Government indicated that it had replied to the substantive issues raised by the indigenous organizations.

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.***

*Article 3 of the Convention. Human rights and fundamental freedoms.* With reference to the serious dispute between the Government and the Mapuche peoples referred to in its 2010 direct request, the Committee notes with ***interest*** that Act No. 20477, adopted on 30 December 2010, modified the jurisdiction of military tribunals. Civilians and minors may in no event be subject to the jurisdiction of military tribunals as defendants, although they retain the right to assistance to take action in military tribunals as victims or initiators of penal action. The Government indicates in its report of September 2011 that cases against Mapuche individuals for terrorist crimes have been reclassified in order to be considered as ordinary crimes. Furthermore, detailed information was provided on some of the proceedings against Mapuche individuals. ***The Committee requests the Government to provide updated information in its next report on the cases that are being tried in which there are still Mapuche defendants. Taking into account the concern expressed by indigenous organizations, the Committee invites the Government to indicate the measures adopted to prevent the use of force or coercion in violation of the human rights and fundamental freedoms of the peoples concerned.***

*Article 1. Self-identification.* The Committee notes that in the CUT's comments two communities were identified which indicated that they are not taken into consideration in the national legislation: a coastal community in the North, known as the Changa people; and another coastal and fishing community in the Lakes and Aysén regions, known as the Chono people. The Huilliche and Pehuenche communities have also called for recognition as distinct peoples. The CUT forwarded a document by an ancestral Mapuche Huilliche organization in the Rios and Lakes regions. The Committee

also notes the documentation prepared by the General Council of Huilliche Chiefs from Chiloé, forwarded by CONAPAN, which describes itself as an ancestral organization representing the historical continuity of former *caciques*. The General Council represents around 5,000 families organized into communities, divided into five communes in the province of Chiloé (the Lakes region). The General Council calls for them to be granted legal recognition so as to be able to ensure the application of the provisions of the Convention in relation to consultation and participation, land, health and education. ***The Committee invites the Government to indicate the measures adopted so that all the groups of the national population referred to in the communications received from indigenous organizations are protected by measures to give effect to the provisions of Articles 6 and 7 (consultation and participation), 14 (land), 25 (health), and 26 and 27 (education), of the Convention.***

*Articles 2 and 33. Coordinated and systematic action with the participation of indigenous peoples. New State institutions for indigenous peoples.* The Government indicates that in the context of the dialogue process initiated in September 2010, the President of the Republic received a report in June 2011 on the progress made in the process which involved over 1,800 persons and that 49 dialogue forums were established. According to the information provided by the Government, the indigenous representatives expressed concern with regard to representativity, access to basic services and connectivity, development, education, culture and the regularization of land rights. In November 2011, the Government indicated that it was proposed to hold discussions on the new institutions. The stages of “the consultations on consultation”, the consultation for the drafting of the regulation of the right to consultation, were determined in the framework of the National Council of the National Indigenous Development Corporation (CONADI). The Government had proposed to continue developing the new institutional system, replacing CONADI by an Indigenous Development Agency and establishing a new indigenous representation body, the Indigenous Peoples’ Council. ***The Committee invites the Government to provide information in its next report on the outcome of the consultations on indigenous institutions and the manner in which indigenous peoples’ concerns and priorities were taken into account. The Committee requests the Government to provide precise information on the manner in which the effective participation of indigenous peoples is ensured in the institutions administering programmes affecting them, as required by Article 33 of the Convention.***

*Articles 6 and 7. Consultation and participation. New legislation.* The Government indicates that it took into account the recommendations contained in the general observation made by the Committee of Experts in 2010 on the obligation of consultation when planning the consultations on indigenous institutions. The Committee also notes the exchanges with the Office on the manner of ensuring that the consultations amount to authentic dialogue so that the indigenous peoples can influence their outcome. The Government included in its reports documentation explaining the consultation process, which is also available on the website of the CONADI. In its report received in September 2011, the Government conveys the concern of a group of indigenous leaders who criticize the fact that various highly complex matters are subject to consultations at the same time within a period that they consider inadequate. Furthermore, criticisms were made in the Senate and Chamber of Deputies of the fact that the consultation process appears to be based on Supreme Decree No. 124 of 2009, and not on the Convention. In November 2011, the Government reiterated its intention to repeal Supreme Decree No. 124 of September 2009, which established consultation and participation machinery, and replace it by a new text agreed upon with the representative institutions of indigenous peoples. The CUT recalled that the adoption of Supreme Decree No. 124 was opposed by the Mapuche organizations on the grounds that it was in violation of the essential content of the Convention. The alternative report prepared by the Aymara people also rejected Supreme Decree No. 124. The Committee notes the concerns expressed by the CONAPACH that Supreme Decree No. 124 establishes a mechanism intended to gather the views of indigenous peoples and not to allow dialogue in good faith intended to achieve the consent of those affected by the proposed measures. In the same way as the other indigenous organizations, the alternative report of the Aymara people emphasizes that Supreme Decree No. 124 excludes certain key public bodies from, and restricts the scope of consultations, as it does not promote a process of dialogue in which indigenous peoples can really exercise influence. The CUT also emphasizes the exclusion of certain State bodies from the obligation of consultation and calls for all investment projects that may affect indigenous rights, whether or not in indigenous lands, to be subject to consultation. In September 2012, the Government forwarded its proposal for “legislation on indigenous consultation and participation”, with a view to developing provisions that enjoy consensus to replace Supreme Decree No. 124. The proposed text lays down the principles and a consultation procedure in order to give effect to *Article 6(1)(a) and (2)* of the Convention, and the Committee notes that it refers to the resettlement of indigenous communities and the significant deterioration of natural resources on which indigenous communities depend. In the reports received in September and October 2012, the Government listed 18 consultations held since March 2010, with five consultation processes being conducted until August 2012 and six planned in the near future. A major national meeting of indigenous representatives has been convened in Santiago in November–December 2012 to review the work carried out by each of the peoples and agree upon a common proposal with the Government. The Committee notes that the Government’s proposal is being discussed in three indigenous languages (Mapuzungun – the Mapuche people, Aymaran and Rapa Nui). ***The Committee invites the Government to include indications in its next report on the outcome of the efforts made for the adoption of legislation supported by consensus to replace Supreme Decree No. 124. The Committee hopes that the new text will ensure the effective participation of indigenous peoples in decisions which may affect them directly and will give full effect to the corresponding provisions of Articles 6, 7, 15 and 16 of the Convention.***



*Article 7. Participation. Process of development.* In reply to its 2010 comments, the Government indicates that the regional indigenous forums are fundamental bodies for dialogue and participation. The Government indicated that in regions in which indigenous development areas (ADIs) exist, the ADI participation forums should also fulfil the role of regional forums so as not to create parallel institutions. The CUT indicates that the regional indigenous forums have been criticized by indigenous organizations due to the lack of a decision-making body for policies intended for local indigenous peoples. The forums do not have a budget and on many occasions have been dependent on the convocational capacity of the regional authority on which they are dependent, and no regular evaluation is carried out of their activities. Certain forums are not operational. With regard to indigenous development areas, the CUT endorses the criticisms by various indigenous peoples concerning the lack of coordination among public institutions as a basis for developing special policies for such territories. In accordance with the concerns expressed by the CUT, the ADIs practically have not functioned. The CONAPACH expresses its concern at the institutional barriers which limit the political participation of indigenous peoples. It regrets the lack of political will to promote the participation of indigenous peoples in the elected State bodies in which decisions are taken, in the absence of special measures to promote the participation of indigenous peoples or the removal of the institutional obstacles identified in national law and practice in relation to elections and political parties. ***The Committee invites the Government to include detailed information in its next report on the impact of the consultations that are being held in guaranteeing the participation of indigenous peoples in the formulation, application and evaluation of plans and programmes which may affect them directly. Please include information on the budgetary resources available to the State and the regions to ensure the participation of indigenous peoples in development programmes and for all the other measures provided for in Article 7.***

*Environmental impact studies.* The Committee noted in its direct request in 2010 that the participation by citizens envisaged in Act No. 19300 of March 1994 and its implementing regulations published in December 2002 does not establish a specific requirement for consultation of indigenous peoples that ensures, in accordance with *Article 7(3)* of the Convention, that studies to assess the social, spiritual, cultural and environmental impact of development activities are carried out in cooperation with indigenous peoples. In the reply received in September 2011, the Government indicated that Act No. 19300 had been amended substantially by Act No. 20417, which entered into force in January 2010. The Committee notes that Act No. 20417 established the Ministry of the Environment, the Environmental Assessment Service and the Environmental Supervisory Service. The Committee observes that the indigenous peoples, in the same way as the Aymara in their alternative report, indicated that sectoral legislation offers less protection than the Convention. In this respect, the Committee notes the rulings of the Supreme Court forwarded by the Government concerning the appeals for environmental protection lodged by indigenous organizations. The CONAPACH also provides decisions resulting from legal action taken by indigenous communities with the support of various NGOs and containing rulings invalidating decisions by State bodies on the grounds that consultations had not been held in accordance with the Convention. The alternative report of the Aymara people refers to other court decisions setting aside appeals for the protection of rights without ruling on the scope of the right to consultation established in the Convention, particularly in relation to studies affecting the province of Parinacota. In October 2012, the Government provided the final report on the process of indigenous consultation on the Regulations on the Environmental Impact Assessment System (SEIA) and the guidelines on the procedures for citizens' participation and support for the assessment of significant deterioration affecting original peoples. A Ministerial Sustainability Council approved, on 28 May 2012, the draft regulations of the SEIA. The Government also stated that the provisions of the new Regulations provide for "a good faith consultation process" and the possibility, in specific circumstances, for indigenous peoples to be able to contribute to the process of environmental assessment. Furthermore, on 21 November 2012, the Government transmitted to the Office a copy of the SEIA Regulations sent to the Office of the Comptroller General of the Republic. The Committee also notes that certain indigenous organizations lodged an appeal for the protection of their rights on 27 June 2012 with the Court of Appeal of Santiago against the Ministerial Sustainability Council in relation to its decision to approve the Regulations of the SEIA, alleging the failure to hold consultations and the inadequacy of the proposed text in terms of the Convention. ***The Committee invites the Government to provide information in its next report on the outcome of the appeal for the protection of the rights of certain indigenous organizations lodged against the Regulations of the SEIA. The Committee hopes that the text of the regulations that ensure effect is given to the requirements of consultation, participation and cooperation with indigenous peoples set out in Articles 6 and 7 of the Convention will be provided with the next report. In the event that an environmental impact study involves the prospection or exploitation of resources in indigenous lands and/or the resettlement of indigenous communities, the Committee invites the Government to indicate how compliance is ensured with all the provisions of Articles 15 and 16 of the Convention.***

*Lands.* The Government indicates that the request for the regularization of land titles, greater flexibility in land boundaries and the purchase of land are among the principal matters raised in June 2011 in the context of the dialogue forum for a historical compromise. The Committee notes the activities undertaken by CONADI in the framework of Act No. 19253 and the legislation in force respecting land. In its alternative report, among other matters relating to *Article 7* of the Convention, the Aymara people regrets that the proceedings in CONADI prevented the regularization of land titles in the province of Parinacota. Not all the persons concerned are able to regularize their land as they do not have the necessary financial resources. The CONAPACH also places emphasis on the case of the ancestral lands of the communities of the Atacameño, Aymara and Quechua peoples in the north of the country. The CUT recalls the work undertaken in 2003 in the framework of the Historical Truth and New Treatment Commission, which made

recommendations concerning lands which were intended to strengthen the protection of indigenous lands, including the demarcation, titularization and protection of the lands over which ancestral indigenous ownership was demonstrated. With reference to *Article 14(3)* of the Convention, the Historical Truth and New Treatment Commission proposed the establishment of expeditious and low-cost legal procedures to resolve land claims by the persons or communities concerned. It expressed the conviction that the existence of efficient and effective machinery to process land claims would prevent claims being made through informal channels. The CONAPACH recalled the comments of the Committee of Experts concerning the obligation of countries which have ratified the Convention to establish machinery to recognize ownership based on traditional occupation. The CONAPACH also emphasized the conclusions and recommendations on lands and territorial rights of the UN Special Rapporteur submitted to the Human Rights Council following a working visit in April 2009. In his recommendations (paragraphs 53 and 54 of document A/HRC/12/34/Add.6, 5 October 2009), the UN Special Rapporteur referred to the Convention and supported the call for the establishment of effective machinery for the recognition of the land rights of indigenous peoples based on occupation and traditional or ancestral use. ***In view of the persistence of a situation that is not in compliance with the Convention, the Committee reiterates its request to the Government to report in detail on the compliance with the Convention of the procedures for the regularization of land title and the settlement of disputes. The Committee hopes to be able to examine information showing that account has been taken of the concerns expressed by trade unions and organizations of indigenous peoples in the comments made in 2010 and that the right to land ownership and possession set out in Articles 13 and 14 of the Convention is recognized for indigenous peoples.***

*Natural resources.* In its comments in 2010, the Committee requested the Government to take the necessary measures to align the national legislation with the Convention so that indigenous peoples are consulted on investment projects likely to affect them directly and so that they can participate in the benefits deriving from the exploitation of mineral resources. The Committee observed previously that the Mining Code, the Act on geothermal energy concessions and the Water Code do not contain provisions on the consultation of indigenous peoples concerning investment projects that involve concessions for use or development. The alternative report prepared by the Aymara people indicates that when the Convention was ratified there was no adjustment of sectoral legislation. The alternative report provided by CONAPACH describes specific cases in which there appears to be a loss of rights by the indigenous Atacameña, Quechua and Aymara communities over water resources in the river Loa and other water and geothermal resources in the north of the country. In the same way as CONAPACH, CONAPAN also refers to the negative impact of mining projects in Diaguita Huascoalitino territory and the establishment of water rights in Mapuche territories by hydroelectric companies, without a determination of whether the interests of indigenous peoples have been prejudiced. In the reply received in September 2011, the Government referred to the development of the consultation process on indigenous institutions. The Committee notes the further indications provided by the Government in September and October 2012 on the attempts made to develop new institutions and to formulate Regulations on the SEIA. The Committee once again recalls the need to give full effect to Article 15 of the Convention, which sets out the conditions for prior consultation procedures and for participation in benefits by the peoples concerned. ***The Committee once again requests the Government to amend the national legislation so as to ensure that indigenous peoples are consulted before any programme is undertaken or authorized for the prospection or exploitation of resources on their lands and are able to participate in the benefits deriving from the exploitation of natural resources. The Committee hopes to be able to examine specific information showing that the rights of indigenous peoples to natural resources have been safeguarded, as set out in the Convention.***

*Health. Education. Cross-border contacts and cooperation.* The Committee notes the concern expressed by the Pelón Xaru Mapuche Nation Peoples Culture Centre on the need for greater government support so that *machis* (traditional Mapuche doctors) can carry out their work under optimal conditions. The urban Mapuche organizations also made calls for access to indigenous health and education. The alternative report of the Aymara people raises issues relating to the right to education and cross-border cooperation. In the same way as the other documentation provided by the CONAPAN, an ancestral Huilliche Mapuche organization emphasizes the need to ensure that persons exercising educational functions in the formal school context are trained in their indigenous communities. ***The Committee requests the Government to provide updated information in its report so that it can examine the manner in which progress has been made in the application of each of the provisions of Parts V, VI and VII of the Convention.***

## Colombia

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1991)***

The Committee notes the Government's report received in August 2012, which contains detailed information in reply to its observation of 2011. The Committee also notes the Government's reply received in February 2012 to the observations made by the International Organisation of Employers (IOE) in October 2011. In addition, the Government sent a report in September 2012 containing a detailed reply to the issues raised by the Single Confederation of Workers (CUT) in March 2012. The Committee also noted the observations made by the National Employers' Association of Colombia (ANDI) in September 2012, which received the support of the IOE; and the new observations from the CUT received in August 2012.

*Communication from the International Organisation of Employers (IOE).* In its report of August 2012 the Government indicates that it shares the concern expressed by the IOE in its communication of October 2011, regarding the fact that many aspects of the Convention are not reflected in the world of work. The Government states that such aspects are the responsibility of another government department, the Ministry of the Interior, which implies a more substantial commitment on the part of the State. The Committee notes that the Government understands that the obligations of the Convention are addressed to States and that the Government formulates its public policy accordingly. The Government states that companies must comply with the legislation which is adopted to give effect to the Convention. Recognizing the concern of the IOE in the report received in August 2012, the Government highlights the case law of the Constitutional Court, which has affirmed emphatically that the obligation to hold prior consultations arises in connection with those measures that can directly affect ethnic communities. The Government mentions Ruling No. C-366/11, issued on 11 May 2011, whereby the Constitutional Court decided to postpone by two years the declaration of unconstitutionality of Act No. 1382 of 2010 through which the Mining Code had been amended. ***The Committee invites the Government, when preparing its next report, to hold consultations with the social partners and indigenous organizations on the subjects referred to in the present observation and to include information on the results achieved by the measures adopted to give effect to each of the provisions of the Convention (Parts VII and VIII of the report form).***

The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.***

*Article 2 of the Convention. Coordinated and systematic action to protect the physical, social, cultural, economic and political integrity of indigenous and Afro-Colombian communities.* In reply to the Committee's previous comments, the Government indicates in its report received in August 2012 that pursuant to Decree No. 4912 of 26 December 2011, a prevention and protection programme was organized with a differential approach aimed at ethnic protection. The Committee notes that a special mechanism was defined for the protection of the territorial rights of ethnic groups which had been violated through violence and/or the negative impact of construction and/or operation of economic mega-projects involving monocultures, mining exploitation, tourism and dock work. Furthermore, following the instructions issued by the Constitutional Court in Order No. 004 of January 2009, the Ministry of the Interior also drew up a roadmap for the formulation of an ethnic protection plan. The Committee notes the summary chart indicating the status of the processes for the protection of each of the 34 indigenous peoples identified. The Committee observes that it already referred in previous comments to some of the difficulties experienced by indigenous peoples in relation to the Convention. ***The Committee invites the Government to include up-to-date information in its next report on the progress achieved in relation to the processes under way for the ethnic protection of the 34 identified indigenous peoples. The Government is also requested to send a copy of the publication mentioned in the report, namely the "Guide to the implementation of the preventive policy of the Public Prosecutor's Office, in relation to the rights of ethnic groups, for the protection of the fundamental right to free and informed prior consultation", published in April 2011.***

*Article 3. Human rights.* In its previous comments the Committee welcomed the adoption of Act No. 1448 of June 2011 concerning compensation for victims and restitution of lands, the aim of which is to compensate the victims of armed conflict. In the communication received in March 2012, the CUT states that there was no prior consultation with the Black, Afro-Colombian, Palenquero and Raizal communities. The CUT reports on the meetings held between community representatives and the government authorities with a view to avoiding the unconstitutional nature of the decree intended to handle, compensate and restore the rights of victims. The Committee notes the detailed information sent by the Government in August and September 2012, in which it describes the process followed during 2011 up to the adoption of Legislative Decree No. 4633 of 3 December 2011, issuing measures for assistance, care, full reparation and restitution of territorial rights to victims belonging to indigenous peoples and communities. The Government indicates that plans for full collective reparation will be adopted with the participation of representatives of the communities. ***The Committee invites the Government to include information in its next report on the implementation of the plans for full collective reparation provided for in Legislative Decree No. 4633 (including for the Black, Afro-Colombian, Palenquero and Raizal communities), the participation of representatives of all the communities and the manner in which these measures have contributed towards restoring the rights established in the Convention.***

*Protection of fundamental rights and physical restitution of collective territories. Afro-Colombian communities of the Curvaradó and Jiguamiandó river basins (department of Chocó).* In the comments that it has been making for many

years, with reference to the various statements made by different trade union organizations, the Committee expressed its concern at the problems and serious deficiencies relating to the application of the Convention faced by the abovementioned Afro-Colombian communities. In the report received in August 2012, the Government indicates that the State is endeavouring to improve the situation regarding protection of the Jiguamiandó. Attached to the Government's report is comprehensive documentation on the policy and security measures for the Jiguamiandó and Curvaradó communities. In a communication received in August 2012, the CUT refers to Order No. A-045 of 7 March 2012 issued by the Special Chamber for Enforcement of Ruling No. T-025 of 2004 and the instructions issued in its compliance orders of 2009 and 2010. In view of the serious situation, the Constitutional Court is calling for the adoption of new urgent protection measures and the establishment of a clear timetable of work to ensure full compliance with all the orders issued. The CUT also refers in its communication to recent studies by the National Indigenous Organization of Colombia (ONIC), which indicated that the worst affected ethnic groups in the first six months of 2012 were the Nasa-Paéz (17 murders), Emberá (15 murders) and Awa (five murders). According to these studies, a total of 54 indigenous persons were killed especially in the region of Cauca (26 per cent of all murders), while each of the departments of Nariño and Risaralda accounted for nearly 15 per cent of the killings. Indigenous peoples in the south and south-east of the country have been affected by the internal armed conflict between the armed forces and guerrilla groups and more recently paramilitary groups, drug traffickers and criminal gangs. The ANDI also establishes a direct link between the violence affecting indigenous communities and the actions of drug trafficking and of illegal armed groups on their territories. The ANDI states that the Government is taking action to prevent acts of violence and is constantly endeavouring to preserve the lives and customs of indigenous peoples. ***The Committee reiterates its concern about the persistence of a grave situation and invites the Government to include information in its next report on the efforts made and the results of the measures adopted to ensure the protection of the physical, social, cultural, economic and political integrity of indigenous and Afro-Colombian communities. The Committee also requests the Government to continue to take the necessary steps to protect the communities victims of violence, to ensure that all reported occurrences of murders and violence are investigated and that the perpetrators are brought to justice.***

*Article 6. Legislation on consultation.* In the reports received in August and September 2012, the Government states that preliminary draft legislation concerning the right to consultation has been prepared with a view to being revised at a high-level meeting. As regards the Bill concerning indigenous territorial entities, negotiations are also continuing with contributions having been received from the Organization of Indigenous Peoples of Colombian Amazonia (OPIAC) and another from the ONIC. The Government also provides information on the Bill concerning lands and rural development. Furthermore, in May 2012, a new royalty regime and its prior consultation process were declared constitutional, by judgment C-317-2012 of the Constitutional Court. In its contribution of August 2012, the ANDI recalls that the obligation of consultation has the rank of a fundamental right and is therefore protected by *tutela* law (constitutional guarantees). The Directorate for Prior Consultation of the Under-Ministry for Participation and Equal Rights at the Ministry of the Interior has a group of 66 professionals for analysing the economic, environmental, social and cultural impact which may be suffered by an ethnic group – indigenous, Roma or minority (Black, Afro-Colombian, Raizal or Palenquero) – by the exploitation of natural resources within its territory. ***The Committee invites the Government to include up-to-date information in next report on:***

- (i) ***the preparation of the draft legislation regulating prior consultation and the consultations actually held in this regard with the indigenous peoples concerned;***
- (ii) ***any developments in the consultation processes conducted with indigenous peoples and the approval of the draft legislation mentioned in previous comments (on a regional environmental council, rural development, access to genetic resources and related traditional knowledge, indigenous territorial entities); and***
- (iii) ***the measures to follow up on the institutionalization of the prior consultation mechanism in the National Development Plan 2010–14 with ethnic groups and the participation in that mechanism of the indigenous peoples concerned.***

*Article 15. Consultation before undertaking or authorizing any programme for the exploration or exploitation of existing resources on indigenous territories.* The Committee notes the information provided by the Government stating that the Directorate for Prior Consultation had held, in 2011, 66 consultations throughout the national territory. The Government has ensured that the presence of communities on the land concerned is certified within 15 days where no verification is required and within 45 days where verification is required on the land concerned. In 2011, a total of 20,128 certificates were issued for the equivalent number of projects. The consultation processes take no longer than six months. In 2011, a total of 279 consultations were recorded for a total of 703 communities; 397 certificates were issued during the first half of 2012. ***The Committee invites the Government to include up-to-date information in its next report on the consultations held with a view to authorizing programmes for the exploitation of existing resources. Please indicate the manner in which it is ensured that the indigenous communities concerned participate in the benefits of such activities, in accordance with Article 15(2) of the Convention.***

*Consultation on exploration and exploitation projects in the Chidima reservation (department of Chocó). Mandé Norte project (departments of Antioquia and Chocó).* In the communication transmitted to the Government in October 2011, the IOE had explicitly expressed its rejection of the request made by the Committee in the observation formulated in 2009 to suspend the exploitation and exploration of natural resources until consultations of the indigenous peoples who

live in the Pescadito and Chidima reservations and in the Uranda Jiguamiandó reservation are held. In its reply to IOE's comments, the Government indicated in February of 2012, its intention to comply with the orders of the Constitutional Court in paragraph 7 of the operative section of *tutela* Ruling No. T-129 of 3 March 2011. The Constitutional Court ordered the Ministry of the Interior and the Ministry of Justice, the Colombian Geological Service (Ingeominas), the Autonomous Regional Corporation of Chocó and the Ministry of the Environment, Housing and Territorial Development to suspend all mining exploration or similar activities, whether legal or illegal, which are being conducted or promoted under concession contracts concluded with any person who might thus affect the Emberá Katio indigenous communities on the Chidima and Pescadito reserves, until such time as the prior consultation process and the search for informed consent from the ethnic communities involved are exhausted. The Committee notes the information sent by the Government concerning the meetings held with a view to creating a rapprochement with the communities concerned. The Committee further notes the statement by the Directorate for Prior Consultation at the Ministry of the Interior that it intends to ensure that each consultation process constitutes an opportunity for the groups concerned to participate in an appropriate, efficient and effective manner in the projects, works or activities which, with their full and informed consent, are due to be undertaken on their ancestral territories. ***The Committee invites the Government to include information in its next report on the implementation of the orders issued under Constitutional Court tutela Ruling No. T-129 of March 2011 concerning the Chidima and Pescadito reserves. The Committee also invites the Government to include information on the follow-up given to Ruling No. T-769/09 of 29 October 2009, whereby the Constitutional Court granted protection of the right to prior consultation to the communities affected by a licence awarded as part of the Mandé Norte project for mining exploration and exploitation in the departments of Antioquia and Chocó.***

*Other disputes relating to mining resources.* The Committee notes the communication from the CUT received in March 2012 and the Government's reply received in September 2012, referring to the situation created in March 2006 as a result of lack of consultation when a licence for mining exploitation was granted for the extraction of gold from a rural plot with a surface area of some 99 hectares located in the *corregimiento* (administrative subdivision) of La Toma in the municipality of Suárez (department of Cauca). The CUT referred to Constitutional Court Ruling No. T-1045A/10 of 14 October 2010 issued in *tutela* proceedings initiated by the La Toma community council. The Constitutional Court reiterated its jurisprudence in relation to the scope and requirements of the form of prior consultation. The Constitutional Court, among other things, ordered the Ministry of the Interior to conduct, guarantee and coordinate prior consultation and ordered the suspension of mining exploitation activities. The Government indicates in its reply that for reasons of public order it has not been possible to continue with consultations in La Toma. ***The Committee would be grateful if the Government would provide information in its next report which will enable the Committee to examine the manner in which the rights of consultation and participation provided for in the Convention in cases of exploration and exploitation of natural resources in territories occupied by Afro-Colombian communities have been re-established. The Committee invites the Government to refer to the other disputes mentioned in previous comments and include up-to-date information on any further developments in its next report.***

*Representativeness.* In relation to its previous comments, the Committee notes the information included by the Government in the report received in August 2012 stating that, in the event of any dispute concerning the representativeness of indigenous leaders, it would be the Standing Committee on Consultation which would settle such disputes since this is the national body for consultation in which representatives of indigenous organizations participate. The election processes within the indigenous communities are conducted in accordance with the customs and practices of the communities concerned.

## Guatemala

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1996)***

The Committee notes the Government's reports received in December 2011 and September 2012, containing additional information concerning certain of the matters examined in its previous comments. The Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) also provided its observations in August 2012 on the project for the construction of a cement plant in the municipality of San Juan Sacatepéquez (department of Guatemala) and the exploitation of mining resources in the Marlin mine located in San Miguel Ixtahuacán (department of San Marcos). The International Organisation of Employers (IOE) expressed support for the observations made by the CACIF.

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of

enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.***

*Communication from the Trade Union Confederation of Guatemala (UNSITRAGUA), the General Confederation of Workers of Guatemala (CGTG) and the Trade Unions' Unity of Guatemala (CUSG). Alternative report prepared by the Council of Mayan Organizations of Guatemala (COMG).* In September 2012, the Office forwarded to the Government a communication from the three trade unions containing general observations on the application of the Convention, and particularly the lack of regulation of the right to consultation and the pending legislative amendments on mining and environmental health. In addition, the Office also received, on 4 December 2012, a communication by the Central Confederation of Rural and Urban Workers (CCTCC) submitting an alternative report prepared by the Council of Mayan Organizations of Guatemala (COMG). Among other issues related to the application of the Convention, the alternative report evoked the events that took place on 4 October 2012 in Totonicapan which resulted in the deaths of eight and the injuries of 35 indigenous peoples. ***The Committee asks the Government to include in its report detailed information on the measures taken to investigate the events that occurred in Totonicapan. Please also include detailed information on the measures taken to ensure observance of the Convention in the situations submitted by the social partners and the indigenous people's organizations (Parts VII and VIII of the report form).***

*Appropriate consultation and participation machinery.* In the report received in December 2011, with reference to the comments that have been made for many years on the right to consultation, the Government forwarded the decision of the Constitutional Court of 24 November 2011 on Case No. 1072-2011 requesting the President of the Republic to reopen the initiative for the regulation of consultation with indigenous peoples through appropriate means to ensure that consultation is held with the due participation of the indigenous peoples. The Committee notes that the Constitutional Court referred to its ruling of 21 December 2009 on Case No. 3878-2007, in which it placed emphasis on the effective right to consultation established in the Convention and recalled that the System of Development Councils (Decree No. 11-2002, which provisionally regulates consultation) offers a structure which continues to "ensure the presence of community representatives in general and, specifically, of representatives of indigenous peoples from the various regions of the country, both elected according to their own principles, values, usages and customs". The Committee recalls that the Office is offering technical assistance to all the parties concerned to facilitate the establishment of appropriate consultation and participation machinery, as required by *Articles 6, 7 and 15* of the Convention. ***Under these conditions, the Committee refers to its previous comments and:***

- (i) requests the Government to provide information in its next report on the measures adopted to establish appropriate consultation and participation machinery in accordance with the Convention, taking into account its general observation of 2010;***
- (ii) reiterates its request to the Government to ensure that indigenous peoples are consulted and can participate in an appropriate manner, through their representative institutions, in the establishment of this machinery in such a way as to be able to express their opinions and influence the final outcome;***
- (iii) requests all the parties concerned to do their utmost to participate in good faith in the above process, with a view to pursuing a constructive dialogue that enables positive results to be achieved;***
- (iv) observing that section 26 of the Act respecting urban and rural development councils provides for provisional consultation machinery with indigenous peoples pending settlement of the issue at the national level, invites the Government to provide information on the use of that provisional machinery and on the application in practice of section 26 of the Act; and***
- (v) requests the Government to take the necessary measures to bring the existing legislation, including the Mining Act, into conformity with the Convention.***

*Project for the construction of a cement plant in the municipality of San Juan Sacatepéquez (department of Guatemala).* The Committee notes the illustrative documentation provided by the Government and the CACIF on developments in the situation in the municipality of San Juan Sacatepéquez in 2011 and 2012. The municipality is located some 31 kilometres to the north east of the City of Guatemala and is composed of municipal township, 20 small villages and 56 groups of houses. Most of the inhabitants are Maya Kaqchikeles. In a special report by the Human Rights Ombudsman, published in December 2011, the principal problems are outlined which make the situation in San Juan Sacatepéquez "an illustrative case of violence, criminality and violations of human rights". In his conclusions and recommendation, the Human Rights Ombudsman emphasizes that in San Juan Sacatepéquez the State lost the monopoly of the legitimate use of force and the control of large areas of the municipality, which passed into the hands of clandestine and illegal security groups. The Government therefore indicates in its report that the violence in San Juan Sacatepéquez emerged prior to the plans to locate a cement plant there and is not a consequence of the project, and has its origins in various separate causes which the State has identified and is endeavouring to resolve. In a Government document prepared by the Standing National Dialogue System (SNDP), dated December 2011, reference is also made to the violence in San Juan Sacatepéquez results from the electoral process and from certain external actors. The Committee notes the

communication provided by the Government in which the Association of Kaqchikeles Communities of San Juan Qamolo Qi' sent to the Ambassador of Germany in Guatemala in August 2011 recalling the violence suffered since 2006, including the murder of community leaders and other very serious forms of ill-treatment. Referring to the earlier recommendations of the Committee of Experts, the Association of Kaqchikeles Communities of San Juan requested the Ambassador of Germany to use his good offices to assess once again, with the participation of the Kaqchikeles peoples of San Juan Sacatepéquez, the social, spiritual and cultural impact on the environment that will be caused by the mining activities and the extent to which the interests of the indigenous peoples would be affected, in accordance with *Articles 7 and 15* of the Convention. The Committee notes the documentation on the preparation of a system to address disputes through awareness-raising workshops on non-violent communication, which were held in 2011 with the participation of the various parties concerned. The Government also included information from the support programme for the National Peace and Reconciliation Process and the German technical cooperation agency (GTZ) in Guatemala. The CACIF indicates that the dialogue process has succeeded in creating confidence in the context of constructive communication. The Committee notes the replies to the questions raised by community leaders in San Juan by the enterprise Cementos Progreso SA, including various proposals and suggestions for guarantees and verification by national and international authorities. ***Under these circumstances, the Committee hopes that all the parties involved will continue their efforts to engage in constructive dialogue through machinery in which they have confidence. The Committee invites the Government to provide updated information in its next report on the progress made in good faith negotiations, in accordance with Articles 6, 7 and 15 of the Convention. The Committee requests the Government:***

- (i) ***to indicate in its next report how the solutions found for the establishment of the cement factory in San Juan Sacatepéquez have taken into account the interests and priorities of the Maya Kaqchikeles Communities residing in the area;***
- (ii) ***to ensure that the project for the establishment of the cement factory in San Juan Sacatepéquez does not have harmful effects on the health, culture and property of the Maya Kaqchikeles Communities residing in the area and draws the Government's attention to paragraphs 3 and 4 of Article 7 of the Convention; and***
- (iii) ***to take the necessary measures to guarantee the integrity of the persons and property affected by the cement factory project and to ensure that all the parties concerned refrain from any acts of intimidation or violence against persons who do not share their views on the project.***

*Exploitation of the Marlin mine in San Miguel Ixtahuacán (department of San Marcos).* The Committee notes the updated information provided by the Government and the CACIF on the exploitation of resources through mining by the company Montana Exploradora de Guatemala SA in a mine located in the vicinity of San Miguel Ixtahuacán. The Committee also recalls that the Inter-American Commission on Human Rights (IACHR), in Decision No. MC 260/07 of 20 May 2010, imposed protective measures and requested the State of Guatemala to suspend mining operations in the Marlin I project and other activities connected with the licence awarded to Goldcorp/Montana Exploradora de Guatemala SA. The IACHR also requested the State to take effective measures to prevent environmental pollution pending the adoption of a decision on the substance of the petition related to the application for protective measures. The Committee observes that according to the information provided by the Government in its report and CACIF, mining exploitation activities have continued. The Ministry of the Environment and Natural Resources indicates that water monitoring is adequate and national and international standards are taken into consideration. Approximately 99 per cent of the water is recycled by means of a closed circuit as part of a responsible mining process. According to the information received, in June 2011, a permanent care centre was inaugurated and days were organized for vaccination and the training of midwives for the benefit of the local population. The company also offered training and educational and sporting infrastructure. The company maintains a road network of 108 kilometres which benefits the whole of the department. The company has become one of the principal contributors to the national economy, as royalties have been paid to the central Government and to the municipalities of San Miguel and Sipacapa. Moreover, the company is reported to have made an additional contribution of voluntary royalties of 4 per cent in accordance with the framework agreement for the provision of voluntary royalties concluded by the Association of Mining Industries in January 2012. ***The Committee refers to its previous comments and requests the Government to provide updated information in its next report on the consultations and participation required by Article 15 of the Convention in relation to the authorization of the exploitation programmes of the company Montana Exploradora de Guatemala SA for existing mining resources.***

*Northern Transversal Strip project. Other territorial development projects.* In its observation in 2011, the Committee noted the comments made by the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG) concerning the lack of consultation of the indigenous peoples concerned in relation to the project for the construction of the Northern Transversal Strip, which involves the construction of a road network of 362 kilometres in the departments of Izabal, Alta Verapaz, Quiché and Huehuetenango. The information provided by the Government in August 2012 included documentation from the Subsecretariat of Territorial Planning and Development concerning a master plan for the central subregion. A document of the Ministry of Communications, Infrastructure and Housing on the development of a strategy to create a "micro-region" was also provided. ***With regard to infrastructure projects, the Committee requests the Government, in the report due in 2013, to include information enabling it to examine in detail the manner in which it has been ensured that indigenous peoples are consulted on each occasion that legislative or administrative measures which may affect them directly are under consideration (Article 6 of the Convention).***

*The Committee invites the Government, when preparing the report due in 2013, to consult the social partners and indigenous organizations on the measures taken to give effect to the Convention. The Committee hopes that the Government will provide a report in 2013 containing specific information on the other matters raised in the observation and direct request made in 2011 and on the results achieved by the measures adopted to give effect to each of the provisions of the Convention.*

## Honduras

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1995)**

*Protection of the rights of the Misquito people. Conditions of employment, social security and health of Misquito divers.* The Committee notes the observations of the Single Confederation of Workers of Honduras (CUTH), sent to the Government in September 2011, and the Government's reply, received in October 2012. The CUTH supplemented its communication with documentation from the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, the Fund of the Centre for Justice and International Law and the Inter-American Development Bank. The CUTH expresses concern that diving is undertaken without proper conditions of safety by Misquito fishers, largely in the Department of Gracias a Dios. Misquito divers fishing for crayfish and prawns use old equipment which is not maintained, lack any relevant training and work on average for 12 to 17 hours a day on the high seas, with diving periods of more than five hours. The CUTH indicates that diving in such inadequate conditions has serious health implications, decompression sickness being the most common occupational disease. The CUTH also reports that Misquito divers have no social security cover, and no access to medical treatment or to administrative or judicial remedies. The CUTH emphasizes that the situation of Misquito divers is a clear example of discrimination and vulnerability. These workers should enjoy the protection afforded by the Convention as members of indigenous peoples whose life and integrity is constantly under threat from the consequences of diving for deep water fish and as members of a geographically isolated and historically marginalized indigenous peoples. In its reply, the Government states that all health and education services have been provided for the Misquito indigenous peoples in the Department of Gracias a Dios. The Ministry of Labour and Social Security supplied a diving manual translated into the Misquito language and addresses workers' claims filed in the Puerto Lempira regional office, to which the Misquito people has access. The Committee notes that workers have access to a bilingual (Misquito-Spanish) labour inspector. It also notes that Executive Decree No. PCM-003-2012, published in March 2012, established an inter-institutional committee to address and prevent the problems of dive-fishing. The committee consists of eight government offices and its duties include, coordinating activities in order to deal comprehensively with the problems of dive-fishing and their effects on the family and the community. The Government adds that the Ministry of Labour and Social Security, in the course of reinforcing the General Directorate of Social Welfare, is to appoint labour prosecutors in the regional offices to deal with Misquito workers' claims free of charge and monitor the training of occupational safety and health inspectors.

The Committee recalls that *Article 20(4) of the Convention* requires particular attention to be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with Part III of the Convention. In *Article 20(1)*, the Convention provides for the Government, in cooperation with the peoples concerned, to adopt special measures to ensure the effective protection, with regard to recruitment and conditions of employment, of workers belonging to indigenous peoples. In this regard, education and training programmes may be established for indigenous communities on health and safety measures with respect to diving. ***The Committee requests the Government to provide more specific information in its next report on the number of Misquito workers engaged in underwater fishing, the inspections carried out and their results. The Committee invites the Government to provide further information on the coverage of Misquito divers by the social security scheme (Article 24) and the availability of adequate health services to treat Misquito divers in the event of occupational accident and disease (Article 25). Please also indicate the manner in which the cooperation of the Misquito people is ensured in the planning and administration of health services (Article 25(2)).***

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16* of the Convention concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.***



*Parts VII and VIII of the report form.* **The Committee invites the Government, in preparing its next report, due in 2013, to consult the social partners and indigenous organizations on the measures taken to give effect to the Convention. It hopes that in 2013 the Government will submit a report containing specific information on the issues raised in the 2008 observation and direct request and on the results obtained by the measures taken to give effect to each provision of the Convention.**

## Paraguay

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1993)**

The Committee notes the Government's report received in May 2012 and the other information related to the application of the Convention provided in September 2011 in the report for the Forced Labour Convention, 1930 (No. 29). The Government provided further information in an additional report received in August 2012, containing indications by the Paraguayan Indigenous Institute and the Department of Original Peoples and Well-being of the Secretariat for Children and Young Persons (SNNA). Furthermore, the Single Confederation of Workers – Authentic (CUT–A), which collaborates in the Chaco Indigenous Peoples' Council, provided its comments in August 2012.

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. **The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.**

*Part VIII of the report form.* The Committee recalls *Part VIII* of the report form states that: “[a]lthough such action is not required, the Government may find it helpful to consult organizations of indigenous or tribal peoples in the country, through their traditional institutions where they exist, on the measures taken to give effect to the present Convention, and in preparing reports on its application”. **The Committee invites the Government, when preparing the report to be submitted in 2013, to communicate with the representative organizations of employers and workers and to consult organizations of indigenous peoples in the country, through their traditional institutions, on the measures taken to give effect to the Convention. The Committee hopes that the Government will provide a report in 2013 containing specific indications on the matters raised in the present observation and on the results achieved through the measures adopted in order to give effect to each of the provisions of the Convention.**

*Article 1 of the Convention. Self-identification.* The Government confirms the results of the 2008 Indigenous Survey, which indicated that there were around 108,308 indigenous persons in the country. The Government indicates that, taking into account the Committee's recommendations, three identification criteria will be used in the Third National Census: self-identification, language and geographical origin. The Committee notes with *interest* that the census is planned for August and September 2012, with the theme: “Different, but from the same country”. The increased growth of the indigenous population was the reason for undertaking the Third National Census; self-identification was included in the Third National Census as a criterion to define the indigenous peoples covered by the Convention. New indigenous communities have been formed and a total of 574 indigenous communities have been registered with the Paraguayan Indigenous Institute (INDI), and the legal personality of 435 of them has been recognized. The Government added that in 2012 identity documents were issued for 1,018 indigenous persons living in very remote communities in the Paraguayan Chaco. Through mobile units, documents were issued in communities bordering on the frontiers of the Plurinational State of Bolivia. **The Committee invites the Government to include with its next report updated statistical data on the indigenous communities in the country.**

*Coordinated and systematic action. Prior consultation.* The Committee notes Decision No. 2039/2010 of the INDI, dated 11 August 2010, establishing the requirement to seek INDI intervention in all consultation processes in indigenous communities. Decision No. 2039/2010 considers that Convention No. 169 is an instrument of direct application which does not require legislation for compliance to be compulsory. The complaints were taken into account by the INDI that it had received from representatives of indigenous communities concerning activities undertaken without the formalities and requirements set out in the Convention. The INDI will establish on a case by case basis the procedures to be followed for each consultation, depending on the subject of the consultation and on the organization and culture of the community affected. The INDI, which is the body responsible for indigenous policy and for the application of Convention No. 169, will not consider valid any consultation undertaken without its monitoring and evaluation. The

Government indicates that the most outstanding outcomes include those relating to the formulation of tourist itineraries in certain indigenous communities. *The Committee invites the Government to provide more detailed information in its report on the consultations held by the INDI in accordance with Decision No. 2039/2010. The Committee requests the Government to provide information on the manner in which the effective participation is ensured of indigenous peoples in the INDI and in other institutions administering programmes which affect them (Articles 2 and 33 of the Convention). The Committee also hopes that its next report will contain information on the manner in which Decision No. 2039/2010 has made it possible to ensure appropriate procedures of prior consultation for the effective participation of indigenous peoples in decisions which may affect them directly (Articles 6 and 7 of the Convention).*

*Article 7. Participation, development projects and the environment.* In reply to previous comments, the Government refers to the information provided by the INDI on the direct discussions with indigenous leaders and organizations for the promotion of ethnic development and to promote the participation of indigenous peoples in the various decision-making bodies with a view to guaranteeing their comprehensive development. *The Committee invites the Government to provide detailed information in its next report on the manner in which it is envisaged that indigenous communities themselves are able to decide their own development priorities. Please indicate whether studies have been undertaken to assess the social, spiritual, cultural and environmental impact of development projects on indigenous peoples and the manner in which the indigenous peoples concerned have participated in such projects.*

*Articles 8 to 11. Customary law and the administration of justice.* In its previous comments, the Committee observed that section 437 of the Criminal Procedure Code provides for the possibility of imposing an alternative sentence when such an alternative “complies more effectively with the aims of the Constitution in relation to the cultural identity of the convicted person under conditions more favourable to the latter”. The INDI indicates that it issues opinions on the status of indigenous citizens and the special legislation applicable to them, thereby promoting the dissemination and knowledge of the specific legal regime among the various State institutions. *The Committee invites the Government to provide information on court decisions which have applied indigenous customary law and examples of any such decisions that have referred to section 437 of the Criminal Procedure Code.*

*Article 14. Lands.* In its previous comments, the Committee noted the difficulties referred to by the Government in ensuring the application of the provisions that are in force in relation to land claims by indigenous communities. A project has been implemented since 2008 for the regularization of indigenous lands, based on an agreement concluded by the INDI and the World Bank. The Committee notes the judgment of the Inter-American Court of Human Rights, dated 24 August 2010 in the case *Xákmok Kásek Indigenous Communities v. Paraguay*. The specific reparation measures ordered by the Inter-American Court of Human Rights include the State returning to the indigenous community the 10,077 hectares reclaimed and identified by the Xákmok Kásek community. Among the guarantees that the situation will not re-occur, the Inter-American Court of Human Rights calls on the State to adopt in its domestic law the legislative, administrative and any other kind of measures that may be necessary to create an effective system for the indigenous peoples to reclaim ancestral or indigenous lands, which allows them to exercise their right to property. The CUT–A expresses concern because many indigenous communities have been deprived of their ancestral lands and now do not have sufficient lands or a propitious environment. The CUT–A also recalls the judgment of the Inter-American Court of Human Rights of 17 June 2005 in relation to the Yakye Axa indigenous community requiring the State, among other measures, to identify the ancestral lands of the members of the community and return them free of charge within a maximum period of three years from the date of notification of the judgment. *The Committee invites the Government to provide information in its next report on the effect given to the reparation measures ordered by the Inter-American Court of Human Rights in relation to the land claims lodged by indigenous peoples. The Committee also requests the Government to provide information on the effect given to Acts Nos 1372/88 and 43/89, which envisaged a system for the regularization of the settlements of indigenous communities (Article 14(3) of the Convention). The Committee reiterates its request to the Government for the provision of information in the next report on the impact of the INDI/World Bank agreement in relation to this matter.*

*Article 15. Natural resources. Forestry undertakings. Intrusions.* In its previous comments, the Committee noted that the application of resolution No. 139/2007 on environmental and forestry management in relation to lands assigned to indigenous communities had been suspended until adequate consultations were held with indigenous peoples. resolution No. 139/2007 was adopted with the aim of “curbing the obvious plundering taking place in several communities”. The CUT–A indicates that there have been cases of the occupation of the lands of indigenous communities by landless rural people, who have extracted wood and engaged in deforestation. *The Committee requests the Government to provide detailed information in its next report on the legislation that is in force protecting the rights of indigenous peoples to natural resources existing on their lands, including their right to participate and to be consulted concerning the use, management and conservation of these resources. The Committee requests information on the activities of the Environmental Inspectorate, the INDI and other government bodies in relation to the subjects addressed in Article 15 of the Convention.*

*Relocation.* In its previous comments, the Committee referred to the displacements of indigenous communities as a consequence of the installations constructed by the bi-national agency Yaciretá. The Government indicates that over 300 indigenous representatives of 50 organizations participated in the First Meeting with Indigenous Organizations of Paraguay, held on 21–22 February 2012 at the premises of the High-Command of the Army, where the importance was

discussed and emphasized of reclaiming indigenous lands in the context of the recuperation of the lands of communities that were relocated by the bi-national agencies Yaciretá and Itaipú. **The Committee invites the Government to provide updated information in its next report on the manner in which it is ensured that effect is given to the Convention in the case of the indigenous communities affected by the bi-national agencies Yaciretá and Itaipú. The Committee requests the Government to include in its next report the information required by the report form under Articles 16, 17 and 18 of the Convention, including a summary of court judgments relating to the relocation of indigenous communities.**

**Article 20. Recruitment and conditions of employment.** In September 2011, a communication was forwarded to the Government from the International Trade Union Confederation (ITUC), transmitting the observations of the National Confederation of Workers of Paraguay (CNT), according to which indigenous peoples are exploited, working over 12 hours a day in exchange solely for food. In its previous comments, the Committee also referred to discrimination relating to wages and treatment on the basis of the indigenous origins of workers, and particularly those working on ranches in the interior of the country and for Mennonite communities, under conditions which in certain cases constitute situations of forced labour. The Government indicates that situations of forced labour have not been identified in the inspections carried out in ranches or major agricultural undertakings. The Committee also notes the information provided on the inspections carried out in 2011 in stock-raising undertakings in the Chaco region and the other activities promoted by the Chaco Regional Directorate to ensure compliance with labour rights. The Government also established a Subcommission on Fundamental Labour Rights and the Prevention of Forced Labour, composed of representatives of public institutions, cooperatives, employers, trade unions, non-governmental organizations and organizations of indigenous communities from the area. In its comments made in August 2012, the CUT-A reports the testimony of indigenous women and young persons who were relocated from their communities to the municipality of Mariscal Estigarribia and once again denounces the working conditions of women domestic workers and temporary and informal workers, as well as the exploitation of child labour in the department of Boquerón. **The Committee invites the Government to continue providing information on the activities of the Regional Labour Directorate of Chaco and the support received by the representatives of indigenous organizations to ensure the application of the provisions of the Convention on recruitment and conditions of employment, the solutions adopted and the penalties imposed. Considering the new comments made by the CUT-A, the Committee requests the Government to add information on the results of the measures taken by the Government for the elimination of forced labour and discriminatory treatment against indigenous peoples, especially in Mennonite ranches and communities. The Committee also refers to its comments on the application of the fundamental Conventions relating to the abolition of forced labour and the elimination of child labour.**

**Traditional activities.** The Committee notes the Government's indications concerning the training provided to representatives of indigenous peoples and certain courses held for communities. **The Committee invites the Government to continue providing information on the measures taken to give effect to Article 23 of the Convention and on the impact of Act No. 3232/2007 on assistance with loans for indigenous communities to strengthen and promote their traditional activities.**

**Article 24. Social security.** The Committee notes with *interest* that since 2011, a monthly pension has been established for all indigenous adults aged over 65 years, administered by the Ministry of Finance. The Teko Pora Programme also provides subsidies for the indigenous population. **The Committee invites the Government to continue providing information on the impact of the measures adopted in extending the coverage of social security schemes to indigenous communities.**

**Health.** The Committee notes the Government's indications on the strategic regional planning undertaken with the participation of departmental indigenous organizations, community leaders, traditional indigenous health workers, shamans, midwives and experts in medicinal plants. The Government provides information on the recruitment in 2010 and 2011 of indigenous health promoters. **The Committee invites the Government to provide updated information in its next report on the measures adopted under Article 25 of the Convention.**

**System of mutual hospital assistance.** The CUT-A attached to its comments of August 2012 the text of Act No. 3050 of October 2006 creating a system of mutual hospital assistance for comprehensive and specialized medical care for the indigenous population of the Chaco region. The purpose of the mutual system is to cover part of the costs of the indigenous population of the Chaco. The CUT-A expresses reservations concerning the constitutionality of the system of mutual hospital assistance when applied exclusively to one region of the country, and notes that it does not cover all social security benefits. **The Committee invites the Government to indicate in its next report the regulations issued under Act No. 3050/2006 and the manner in which the health services and benefits envisaged by the mutual assistance system are provided to beneficiaries.**

**Education and means of communication. Policies for indigenous children. Programme of action in the department of Caaguazú with the Mbya Guaraní indigenous communities.** The Government indicates that Act No. 3733 of 2009 allocated to the indigenous sector 1 per cent of the grants provided for tertiary level education. The CUT-A expresses concern at the very high level of illiteracy that continues to affect the indigenous population. The Committee recalls that 51 per cent of the indigenous population is illiterate. The Committee notes with *interest* the activities undertaken by the Department of Indigenous Peoples and Well-being of the SNNA, which has been in operation since 2010, and particularly in 17 urban indigenous settlements and in the department of Caaguazú with the Mbya Guaraní indigenous communities. A

programme of action was developed through prior consultation with the communities concerned and using a methodology based on the ancestral practices of the Mbya Guaraní community. With the support of the ILO International Programme for the Elimination of Child Labour (ILO–IPEC), the CUT–A and the Rural Association of Paraguay implemented mini-programmes in 2011–12 to promote social dialogue and eradicate child labour in the department of Caaguazú. The Committee welcomes these initiatives, which benefit from the participation of the social partners and indigenous organizations. ***The Committee invites the Government to provide updated information in its next report on the result of the activities carried out by the General Directorate of Indigenous School Education and the Department of Original Peoples and Well-being, in particular with regard to the fight against illiteracy (Articles 26 to 31 of the Convention).***

*Article 32. Contacts and cross-border cooperation.* The INDI refers to the consultations held by the Office of the High Commissioner for Human Rights in the region and the publication of guidelines for the protection of isolated indigenous peoples and for initial contacts in the Amazon region, Gran Chaco and the eastern region of Paraguay, published in May 2012. In its previous comments, the Committee noted a cooperation agreement concluded between Paraguay and the Plurinational State of Bolivia in June 2009 concerning the Ayoreo people, whose ancestral lands cover a large part of the northern region of the Paraguayan Chaco and the south of the Plurinational State of Bolivia. ***The Committee requests the Government to provide information in its next report on the establishment of the bilateral agency responsible for addressing the requirements of the territorial unity of the Ayoreo people and other agreements concluded with neighbouring countries on the subjects covered by the Convention. Please also provide information on the effect given to the guidelines for the protection of isolated indigenous peoples and for initial contacts in the Eastern region of Paraguay.***

## Peru

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1994)***

The Committee notes with *interest* the Government's report received in September 2012 providing, in response to the 2011 observation, detailed information on progress made in implementing the Act on the right to prior consultation, promulgated in September 2011; and on the process of drafting the regulations to the Act which came into force on 4 April 2012. The detailed information sent by the Government in a report received in September 2011 will also be examined below.

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it deems appropriate on the observations made by the IOE.***

*Part VIII of the report form. Communications from indigenous peoples.* The Committee notes the communication from the General Confederation of Workers of Peru (CGTP) enclosing the 2012 Alternative Report prepared by five national and regional indigenous organizations and the Indigenous Peoples Working Group of the National Coordinator for Human Rights. The Alternative Report 2012, disseminated over the Internet, was likewise sent by the ILO to the Government of Peru in August 2012. ***The Committee invites the Government, in preparing its next report, to continue to consult with the social partners and indigenous organizations on the measures taken to give effect to the Convention. It hopes that in 2013 the Government will submit a report containing specific information on the matters raised in this observation and on the results achieved by the measures taken to give effect to each provision of the Convention.***

*Article 1 of the Convention. Peoples covered by the Convention.* In its previous comments, the Committee pointed out that all indigenous communities must be covered by the Convention, regardless of their designation. The Committee notes the criteria for the identification of indigenous or original peoples laid down in the Regulation which provides that the criteria established in section 7 of the Act on the right to prior consultation “should be interpreted within the framework of Article 1 of the Convention” (section 3(k) of the Regulation). Furthermore, Ministerial Resolution No. 202-2012-MC of 22 May 2012 approved a directive regulating the operation of the official database of indigenous or original peoples. The database is a declarative register and reference tool, not a constitutive register of rights. ***The Committee invites the Government to indicate in its next report which indigenous peoples have been entered in the official database and to explain how the latter has been updated and evaluated.***

*Articles 2 and 33. Coordinated and systematic action.* In reply to earlier comments, the Government referred in its report of September 2011 to plans devised by the National Strategic Planning Centre (CEPLAN), including the Comprehensive Development Plan for the Apurímac, Ayacucho and Huancavelica Indian Peoples 2010–21 (DIPA), the Madre de Dios regional government’s activities (2007–21) and the participation of indigenous peoples in the Ucayali regional government’s development plans. The National Strategy entitled “CRECER” in districts with indigenous peoples is aimed at a reduction of several percentage points in malnutrition among children by 2011. The Committee recalls that the duties of the National Institute for the Development of Andean, Amazonian and Afroperuvian Peoples (INDEPA) were taken over by the Ministry of Culture. The Vice-Ministry for Inter-Cultural Affairs is the Executive’s specialized technical body for indigenous matters (section 19 of the Act on the right to prior consultation and section 28 of the Regulation). The alternative reports sent by the CGTP stress the need for institutional reforms with an inter-cultural focus. ***The Committee invites the Government to specify the authorities that have responsibility at national and regional level for the matters covered by the Convention and to indicate the steps taken to ensure that these authorities have the means to perform their duties properly. The Committee requests the Government to indicate how the participation of the peoples concerned in the development of the programmes and plans mentioned in its reports has been ensured (Article 2(1)). The Committee points out that the planning, coordination, execution and evaluation of measures must be undertaken in cooperation with the peoples concerned (Article 33(2)) and hopes that the report will include an evaluation of the said programmes and plans as required by the Convention.***

*Article 3. Human rights and fundamental freedoms. Investigation of events in Bagua Province (Department of Amazonas).* In its previous comments, echoing the Conference Committee at its 2009 and 2010 sessions, the Committee of Experts asked the Government to report on the results of the court proceedings pertaining to events that occurred in Bagua Province on 5 June 2009. In the report received in September 2011, the Government summed up the various recommendations made by the public bodies and other entities that investigated the events, including the conclusions drawn by the Congress of the Republic in June 2010. The Congress of the Republic requested the Public Prosecutor to identify the individuals and authorities involved, and also to find those politically responsible. The Government added in its report detailed information on the status of the different court proceedings. The alternative reports sent by the CGTP assert that the events in Bagua are evidence of the need for an inter-cultural dialogue to be conducted in good faith and that social protest must not be turned into a criminal offence. ***The Committee requests the Government in its next report to include new and up-to-date information on any trials still under way relating to the events in Bagua. The Committee invites the Government to indicate the measures taken to ensure that no force or coercion shall be used in violation of the human rights and fundamental freedoms of indigenous peoples and to avoid criminalizing events held by indigenous peoples.***

*Article 6. Consultation.* The Committee again welcomes the adoption of the Act on the right to prior consultation and its Regulation, which contain many references to the provisions of the Convention. Numerous references to the Convention and to ILO technical assistance and documentation are also to be found in the *Methodology Guide* published by the Vice-Ministry for Inter-Cultural Affairs to provide guidance and assist with the management of public sector activities involving indigenous peoples. The Act and its Regulation set forth the stages of the consultation procedure, facilitate the identification of indigenous peoples and define the measures that are subject to consultation. They stress the importance of conducting consultations in good faith as part of a genuine inter-cultural dialogue and the need to pay special attention to the situation of women, children, persons with disabilities and the elderly (section 5(a) and (g) of the Regulation). The right of petition of indigenous organizations has been included in section 9 of the Regulation. The Government indicates that some indigenous organizations refrained from participating in the consultations on the Regulation. The alternative reports sent by the CGTP allude to objections to the consultation process and the content of the Act and its Regulation. The Committee notes that taxation and budgetary rules will not be subject to consultation (section 5(k) of the Regulation). Also exempt from consultation are any exceptional or temporary state decisions taken to address emergency situations arising from natural or technological disasters (section 5(l) of the Regulation) and administrative measures deemed to be supplementary (12th supplementary, transitional and final provision of the Regulation). Furthermore, the current legislation does not envisage further legal provisions on the machinery for participation and for participation in benefits (fifth and tenth supplementary, transitional and final provisions of the Regulation) required by the Convention. The Committee understands that the Act on the right to prior consultation and its Regulation, the operation of the official database on indigenous peoples, the dissemination of a methodology guide and the call for indigenous interpreters to receive training in translation, interpretation and prior consultation, are evidence of progress made in establishing, as the Committee encouraged governments to do in its general observation published in 2010, “effective consultation mechanisms that take into account the visions of governments and indigenous and tribal peoples concerning the procedures to be followed”. ***The Committee hopes that the next report will contain information allowing it to ascertain how the new measures adopted under the Act on the right to prior consultation and its Regulation have been implemented. Bearing in mind that full effect has not as yet been given to the provisions on participation and cooperation by indigenous peoples set out in Article 6(1)(b) and (c), Article 7 and Part II (Land) of the Convention, the Committee encourages the Government to ensure, in consultation with the indigenous peoples and other interested parties, that appropriate legislative measures are adopted and that the provisions of the current legislation are revised accordingly.***

*Article 12. Legal proceedings.* In reply to earlier comments, the Government states in the report received in September 2011 that the right to consultation has been enforceable since 2 February 1995, when Convention No. 169 entered into force. The Government also reports on the capacity-building activities for judiciary staff in the area of indigenous rights. In the report received in September 2012, the Government gives an account of the efforts made to reinforce local courts (*justicia de paz*) and inter-cultural justice. ***The Committee invites the Government in its next report to provide information on any court decisions settling matters of principle relating to the rights protected by the Convention. Please include examples of decisions by local courts relating to the Convention (Part IV of the report form), and related follow-up.***

*Article 14. Land.* In the report received in September 2011, the Government states that the regional governments are responsible for the adoption of measures needed to guarantee the ownership rights of indigenous communities and to move the titling process forward. The Committee notes that 6,067 rural communities were recognized, 5,095 of which have been granted land titles, with titling still pending for 972 native communities. Of the 1,447 native communities registered or recognized, a total of 1,265 had received titles by January 2010, while titling is still pending for some 182 such communities. The Government confirms that the first supplementary provision of Supreme Decree No. 020-2008-AG establishes that the lands owned by peasant or native communities are not deemed unclaimed land suitable for agriculture, for the purposes of Legislative Decree No. 994 of 2009 on the promotion of private investment in irrigation projects to extend the agricultural frontier to lands owned by peasant or native communities. In earlier comments the Committee examined the situation of the Santo Domingo de Olmos (Lambayeque) community, where agreement had been reached to promote optimum use of water and new irrigation infrastructure. ***The Committee invites the Government to continue to report on the land registration and titling processes conducted by regional governments, specifying the surface areas titled and the beneficiary communities in each region of the country. Please also provide examples of the manner in which land claims submitted by indigenous peoples have been settled.***

*Regulation of the use of forestry resources and the mining and energy sector.* Further to its previous comments, the Committee notes with ***interest*** that the Forestry and Forest Fauna Act (Act No. 29763, published on 22 July 2011) addresses recognition and respect for the rights of indigenous peoples and includes provisions on woods in native communities' lands. In its report of September 2011 the Government states that, since the legislation has not been consolidated, a bill was submitted to the Congress of the Republic for the adoption of a single text grouping together all the rules governing activities in the electricity sector. ***The Committee invites the Government to send information in its next report on the use made in practice of the current legal provisions on the consultation and participation of indigenous peoples as regards the use of forestry resources. The Committee asks the Government to describe the manner in which the indigenous peoples have been consulted regarding the legislation governing activities in the electricity sector, indicating the provisions applying to activities in the mining and energy sector which give effect to Article 15 of the Convention.***

*Mining and hydroelectricity.* The Committee notes the information sent by the Government in its September 2011 report concerning activities in the peasant community of San Lucas de Colán (Piura), the area of influence of the Sallca Pucará hydroelectric power station (Cuzco), the peasant community of San Antonio de Juprog (Ancash) and the territory of the *Matsés* people (Loreto). The Government states that by intervening in a timely manner, in some of these instances, it succeeded in containing the disputes. In one case it was noted that a company had undertaken commitments such as hiring and youth training or road building, which it failed to meet in full thus creating tension between the parties. The General Union of Wholesalers and Retailers of the Grau Tacna Commercial Centre (SIGECOMGT) once again expressed concern in April 2011 about the situation of certain *Aymará* peasant communities. Its observations were sent to the Government in August 2007, May 2008 and August 2011. SIGECOMGT transmitted the Views (communication No. 1457/2006) of the Human Rights Committee issued under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights and adopted at its 95th Session (March–April 2009), in which the committee observed that there were no prior consultations concerning the construction of wells (CCPR/C/95/D/1457/2006, 24 April 2009, paragraph 7.7). SIGECOMGT refers to new administrative measures adopted between August 2009 and February 2011 concerning gold mining, well drilling and the use of water resources. The 2012 Alternative Report sent by the CGTP refers to and documents important new cases: the Conga mining project, due to which a state of emergency was declared in four provinces in September 2011 and social tension persists in 2012; environmental pollution due to mining, affecting the population and the river Tintaya micro-basin, which prompted the peasant communities to file a complaint with the authorities of Espinar Province in November 2011. In Cordillera del Cóndor (Amazonas), in November 2011, 114 titles for mining rights were either registered or being processed covering an area of some 99,000 hectares that overlaps with an area occupied by native communities. ***The Committee requests the Government in its next report to include detailed information on the measures taken to ensure observance of the Convention, particularly Article 15, in the situations referred to in previous comments and in the cases submitted by the social partners and indigenous organizations. The Committee invites the Government to provide in its next report information on the effect of the measures taken to investigate the complaints filed with the competent authorities regarding environmental pollution in territories occupied by indigenous peoples. The Committee asks the Government, if environmental pollution is confirmed, to make every effort to protect the life and health of the members of the communities affected.***

*Participation in benefits.* The Government states in the report received in September 2011 that Emergency Decree No. 079-2009 provides for local and regional governments to earmark 5 per cent of the funds received in petroleum royalties for public investment projects and social expenditure. Emergency Decree No. 026-2010 increased the regional governments' requirement to 10 per cent, making more funds available and broadening investment to cover irrigation systems, micro-enterprises, the opening of pathways, bridges and retaining walls. The Government also refers to gas royalties and funds available from the Social and Economic Development Fund of the Camisea gas field (Cuzco). Some 300 participants benefited from a programme of training on hydrocarbons for indigenous leaders and four students from the Amazon region obtained university scholarships. The Committee refers to *Article 15* which establishes the rights of indigenous peoples to the natural resources and the manner in which they should participate in the benefits from exploration or exploitation of the resources pertaining to their lands. ***The Committee refers to the other matters relating to the exploitation of natural resources raised in this observation and asks the Government to provide in its next report examples of the concrete effects the system of royalties and the other measures adopted by local and regional governments have had on the lives of indigenous peoples, such as their participation in the benefits, their development and the areas in which they live.***

*Education. Media.* In the report received in September 2011, the Government states that more than 20,000 teachers in bilingual schools received training between 2006 and 2009. By mid-2011, nearly 193,000 teachers had received training through the National Programme for the Promotion of Bilingual Teaching in the Peruvian Amazon. According to information in the 2012 Alternative Report sent by the CGTP, as at August 2012, 20 per cent of indigenous children between 6 and 11 years of age had no access to a learning centre. The abovementioned report indicates that there is still a serious information deficit owing to a lack of accurate data on indigenous children of school age and inter-cultural and bilingual education institutions. ***The Committee stresses the importance of the provisions on the participation and involvement of the peoples concerned in the formulation and implementation of education programmes (Article 27). The Committee invites the Government in its next report to include information on the impact of the measures adopted in terms of eliminating prejudice against indigenous peoples and promoting inter-cultural and bilingual education, in particular, among indigenous girls and boys of compulsory school age (6–11 years old).***

## Bolivarian Republic of Venezuela

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2002)***

*Communication from the International Organisation of Employers (IOE).* The Committee notes that the IOE has submitted observations in August 2012 on the application in law and practice of *Articles 6, 7, 15 and 16 of the Convention* concerning the requirement of consultation. In this regard, the IOE raises the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus of indigenous and tribal peoples, and the importance for the Committee to be aware of the consequences of the issue in relation to legal security, financial costs and certainty of both public and private investment. The IOE refers to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also states that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. The Committee notes the reply received from the Government in November 2012 concerning the lack of consultation with indigenous communities. The Government recalls the various measures adopted for the recognition of a pluri-cultural and multi-ethnic Republic in the context of the National Constitution, which has been in force since March 2000, and to give effect to the Basic Act on indigenous peoples and communities, enacted in December 2005. The Office of the Ombudsman, the Standing Commission for Indigenous Peoples and the People's Ministries for Indigenous Peoples and for the Environment work together. The Government adds that the state policy is implemented with the active leading and participation of indigenous peoples. The national Constitution entrusts responsibility to the executive authorities, with the participation of indigenous peoples, for the demarcation of their lands and to guarantee their right of collective ownership. Indigenous peoples elect three deputies to the National Assembly in accordance with the Electoral Act, in conformity with their traditions and customs. In its observation and direct request in 2009, the Committee noted the progress made by certain of these measures and requested the Government to provide further information on the application of the Convention. ***The Committee invites the Government, when preparing the report that is due in 2013, to communicate with the representative organizations of employers and workers and to consult the organizations of indigenous peoples in the country, through their traditional institutions, concerning the measures adopted to give effect to the Convention (Parts VII and VIII of the report form). The Committee hopes that in 2013 the Government will provide a report containing replies to the specific points raised in 2009 and on the results achieved by the measures adopted to give effect to each of the provisions of the Convention.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 64** (*Burundi*); **Convention No. 107** (*Iraq*); **Convention No. 169** (*Denmark, Fiji, Nepal*).



## Specific categories of workers

### Ecuador

#### **Nursing Personnel Convention, 1977 (No. 149) (ratification: 1978)**

*Articles 2, 5 and 6 of the Convention. Employment and working conditions for nursing personnel – Consultations – Regulation of hours of work.* The Committee notes the comments of the Ecuadorian Medical Federation, which were received on 29 June 2012 and transmitted to the Government on 29 August 2012, concerning the application of the Convention. According to the Federation, the provisions of the Organic Public Service Act (LOSEP) of 2010, particularly section 47(k) regulating compulsory redundancies, and Executive Decree No. 813 of 2011 setting out the procedure for such redundancies, run contrary to *Articles 2, 5 and 6* of the Convention since they were adopted without social dialogue, provide no opportunity for workers to intervene whether administratively or judicially, and permit arbitrary dismissals of medical personnel. The Federation indicates that in 2011, approximately 5,000 public service workers, including medical personnel, were dismissed pursuant to the new legislation. In addition, the Federation alleges that the new laws have increased the working hours to eight hours per day, which violates constitutionally protected rights of workers engaged in dangerous and unhealthy occupations. The Committee also notes the report of the technical assistance mission undertaken by the Office from 15 to 18 February 2011, which noted possible discrepancies between the Labour Code and LOSEP and ratified ILO Conventions. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the Ecuadorian Medical Federation. Moreover, noting that a Constitutional Court ruling is pending on the constitutionality of LOSEP and also that the Government is considering labour law reforms based on the recommendations of the ILO technical assistance mission, the Committee requests the Government to keep the Office informed of further developments on these matters. Finally, the Committee requests the Government to provide its response to the Committee's last comment formulated in 2009 addressing a number of issues concerning national law and policy with respect to nursing services and nursing personnel.*

### Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 149** (Guyana, Iraq, Luxembourg); **Convention No. 172** (Guyana); **Convention No. 177** (Bosnia and Herzegovina, Bulgaria).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **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)**

### **Albania**

*The Committee invites the Government to report on the submission to the Albanian Parliament of the remaining instruments adopted by the Conference at its 82nd Session (the Protocol of 1995 to the Labour Inspection Convention, 1947), 90th Session (Recommendations Nos 193 and 194), and all the instruments adopted at the 78th, 86th, 89th, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions.*

### **Angola**

*Failure to submit. The Committee invites the Government to provide the required information on the submission to the National Assembly of the instruments adopted at the 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions of the Conference (2003–12).* 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**

The Committee notes the indications provided by the Government in August and October 2012 indicating that Conventions, Recommendations and Protocols adopted by the Conference from the 83rd to the 101st Sessions (1996–2012) were submitted to the competent authority. The Government also indicated that Domestic Workers Convention, 2011 (No. 189), and its corresponding Recommendation, 2011 (No. 201), were submitted to the competent authority on 11 July 2012 by way of a circulation note. *The Committee would be grateful if the Government would confirm that all the abovementioned instruments were submitted to the Parliament of Antigua and Barbuda. It further invites the Government to specify the dates on which the instruments adopted from the 83rd to the 101st Sessions of the Conference were submitted to the Parliament of Antigua and Barbuda.*

### **Azerbaijan**

*The Committee 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, 99th, 100th and 101st Sessions of the Conference. Please also indicate the date of submission of Recommendation No. 195 to the National Assembly.*

## Bahamas

The Committee *regrets* that the Government has not replied to its previous comments. ***It asks the Government to supply information on the submission to Parliament of the 20 instruments adopted by the Conference at 11 sessions held between 1997 and 2012 (85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th and 101st Sessions).***

## Bahrain

*Serious failure to submit.* The Committee notes the information provided by the Government in August 2012 indicating that the national practice requires, by virtue of the Constitution, the submission of international Conventions to the Council of Ministers which is the body responsible for the formulation of the State's public policy and following up on its implementation (section 47(a) of the Constitution of Bahrain). The Committee recalls that the Government indicated in September 2011 that with the beginning of parliamentary life in 2002 and the establishment of a National Assembly – composed of the Consultative Council (*Majlis Al-Shura*) and the Council of Representatives (*Majlis al-Nuwab*) – there was a need to establish a new mechanism to submit the instruments adopted by the Conference to the National Assembly. The Committee notes that, by virtue of article 19, paragraphs 5 and 6, of the Constitution, each of the Members of the Organization undertakes 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 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 also to the parliamentary body. ***The Committee therefore urges the Government, as did the Conference Committee, to report on the submission to the National Assembly of the 19 instruments adopted by the Conference at ten sessions held between 2000 and 2012.***

## Bangladesh

*Serious failure to submit.* The Committee notes the statement made by the Government representative in June 2012 indicating that the process of submission is a long one in his country involving various steps such as translation to Bangla and the approval by the Cabinet and relevant authorities. In a communication received in December 2012, the Government reiterates the information provided at the Conference Committee and adds that the process of submission will follow tripartite consultation. ***The Committee invites the Government to provide information on the submission to Parliament of the 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, 99th, 100th and 101st Sessions. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 37 pending instruments to Parliament.***

## Belize

*Serious failure to submit.* ***The Committee refers to its previous observations and asks the Government to provide information on the submission to the National Assembly of the 44 instruments adopted by the Conference at its 84th (Maritime) Session (October 1996), and during the other 20 sessions held between 1990 and 2012. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 44 pending instruments to the National Assembly.***

## Plurinational State of Bolivia

The Committee notes with *interest* the information provided by the Government indicating that on 21 August 2012 the Chamber of Deputies of the Plurinational Legislative Assembly approved a bill for the ratification of Convention No. 189. The Committee also recalls that on 26 April 2005 the international labour Conventions adopted by the Conference between 1990 and 2003 were submitted to the National Congress. ***The Committee requests the Government to report the decision taken by the National Legislative Assembly in relation to the Conventions submitted to it in April 2005. The Committee once again requests the Government to provide all relevant information on the submission to the National Congress of the Conventions, Recommendations and Protocols adopted by the Conference between 1990 and 2010.***

## Brazil

The Committee recalls that Conventions Nos 128, 129, 130, 149, 150, 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, 99th, 100th and 101st 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 41 pending instruments to the National Congress.*** In this regard, the Committee again 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).

## Burundi

***The Committee asks the Government to supply information on the submission to the National Assembly of the instruments adopted at the 94th, 96th, 99th, 100th and 101st Sessions of the Conference.***

## Cambodia

*Submission to the National Assembly.* The Committee notes with ***interest*** that, on 21 December 2011, the Government submitted to the National Assembly information on the instruments adopted by the Conference between 1973 and 2007. The Government further reported that the texts of the instruments were made available to the National Assembly in Khmer and English, including a summary of each instrument. ***The Committee welcomes this progress and hopes that the Government will provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the National Assembly. It also invites the Government to provide information on the submission to the National Assembly of the Convention and Recommendations adopted by the Conference at its 99th, 100th and 101st Sessions (2010–12).***

## Chile

The Committee recalls that the ratification of Convention No. 187 was registered in April 2011. The Government indicated in previous communications its intention to examine the failure to submit to the National Congress the instruments adopted at the Conference. ***The Committee once again requests the Government to provide the information required on the submission to the National Congress of the instruments adopted at 15 sessions of the Conference held between 1996 and 2012 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th and 101st Sessions).***

## Colombia

*Submission to the Congress of the Republic.* The Committee notes with ***interest*** the information transmitted by the Government indicating that, on 31 October 2012, the pending instruments adopted by the Conference between 1988 and 2012 were submitted to the Senate and the House of Representatives of the Congress of the Republic. The Government also reported that, on 4 April 2012, Convention No. 189 was submitted to the Congress of the Republic for its ratification. ***The Committee welcomes this progress and hopes that the Government will continue to provide on a regular basis the required information on the submission of the instruments adopted by the Conference to the Congress of the Republic.***

## Comoros

***Serious failure to submit. The Committee, in the same way as the Conference Committee, urges the Government to submit the 40 instruments adopted by the Conference at the 19 sessions held between 1992 and 2012 to the Assembly of the Union of Comoros.***

## Congo

***Serious failure to submit.*** The Committee notes the statement made by the Government representative to the Conference Committee in June 2012 recalling that the Ministry of Labour and the Secretary-General of the Government had agreed to submit to the National Assembly, every three months, a certain number of Conventions with a view to their ratification. The Committee notes the bills ratifying Conventions Nos 184, 188 and 189. The Committee welcomes the efforts made by the governmental departments concerned with a view to complying with the country's constitutional obligations. ***The Committee, in the same way as the Conference Committee, invites the Government to complete the procedure of the submission of the 90 Conventions, Recommendations and Protocols not yet submitted to the National***

**Assembly.** It recalls that these consist of the instruments adopted by the Conference at its 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 Recommendations Nos 167 and 168), 69th, 70th, 71st (Recommendations Nos 170 and 171), 72nd, 74th and 75th (Recommendations Nos 175 and 176) Sessions, as well as the instruments adopted at 21 sessions of the Conference held between 1990 and 2012.

## Côte d'Ivoire

*Serious failure to submit.* The Committee recalls the Government's communication received in October 2011 indicating that the Conventions and Recommendations adopted by the Conference between 1995 and 2010 were submitted to the Economic and Social Council on 25 August 2011. ***The Committee once again invites the Government, in the same way as the Conference Committee, to complete the steps to submit to the National Assembly the 31 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at the 15 sessions held between June 1996 and 2012 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions).***

## Croatia

The Committee notes the information provided by the Government indicating that the reports and translations of the majority of the instruments adopted between 1998 and 2011 have been prepared. Because of parliamentary elections, the matter has not yet been included in the agenda of the Croatian Parliament. ***The Committee again invites the Government to take appropriate measures in order to ensure that the 18 remaining instruments adopted by the Conference at ten sessions held between 1998 and 2012 (86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th and 101st) are submitted to the Croatian Parliament.***

## Democratic Republic of the Congo

*Serious failure to submit.* The Committee recalls that the Ministry of Labour 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, in the same way as the Conference Committee, urges the Government to provide other relevant information on the effective submission to Parliament of the 31 instruments adopted at the 15 sessions of the Conference held between 1996 and 2012.***

## Djibouti

*Serious failure to submit.* The Committee notes with ***serious concern*** that the failure of submission by Djibouti concerns the instruments adopted at the 29 sessions of the Conference held between 1980 and 2012. ***The Committee, in the same way as the Conference Committee, 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 65 instruments adopted at the 29 sessions of the Conference held between 1980 and 2012 (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, 99th, 100th and 101st Sessions).***

## Dominica

*Serious failure to submit.* The Committee ***regrets*** that the Government has not replied to its previous observations. ***In the same way as the Conference Committee, it requests that the Government announce that the 38 instruments adopted by the Conference during 18 sessions held between 1993 and 2012 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions) have been submitted to the House of Assembly.***

## El Salvador

*Serious failure to submit.* ***The Committee refers to the observations that it has been formulating for many years and requests the Government to provide information on the submission to the Congress of the Republic of the remaining instruments adopted at the 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163), 69th (Recommendation No. 167) and 90th (Recommendations Nos 193 and 194) Sessions. The Committee also requests the Government to provide information on the submission to the Congress of the Republic of the instruments adopted at 20 sessions of the Conference held between October 1976 and June 2012 (62nd, 65th, 66th, 68th, 70th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions).***

## 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 once again 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 instruments adopted by the Conference at its 99th, 100th and 101st Sessions (2010–12).***

## Ethiopia

*Submission to the House of People's Representatives.* The Committee notes with *interest* the information provided by the Government in September 2012 indicating that the instruments adopted by the Conference at its 88th (Recommendation No. 191), 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions were submitted to the House of People's Representatives on 7 March 2012. The Government also indicated that Recommendation No. 202 was submitted to the House of People's Representatives on 24 September 2012. ***The Committee welcomes this progress and hopes that the Government will provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the House of People's Representatives.***

## Fiji

The Committee notes the information provided by the Government in May 2012 indicating that Fiji's current "competent authority" (the Cabinet) has approved the ratification of Conventions Nos 142, 181, the Maritime Labour Convention, 2006 (MLC, 2006), and Convention No. 183. The Committee notes that the Cabinet has also examined Recommendations Nos 188, 189, 193 and 194. The Government also reiterated that it is committed to adopt a new Constitution by 2013 and to hold general elections in 2014. The Committee thus notes that the Government will be able to submit the instruments adopted by the Conference only after the establishment of a Parliament. ***The Committee therefore requests information about any developments in regard to the submission to Parliament of the instruments adopted by the Conference at the corresponding sessions held between 1996 and 2012, as required by article 19 of the ILO Constitution.***

## Gabon

The Committee notes the information received in September 2012 on the measures taken by the government to submit the Convention and the Recommendations adopted by the Conference at the 100<sup>th</sup> and 101<sup>st</sup> sessions. ***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 82nd, 83rd, 85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th and 101st Sessions of the Conference.***

## Georgia

The Committee notes that the instruments adopted at the 100th Session of the Conference were submitted to the Parliament of Georgia on 2 September 2011. ***The Committee invites the Government to provide information on the submission to Parliament of the instruments adopted by the Conference at 15 sessions held between 1993 and 2012 (80th, 81st, 82nd, 83rd, 84th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 101st Sessions).***

## Ghana

The Committee notes with *interest* the information provided by the Government on the submission of the 21 remaining instruments adopted by the Conference between 1993 and 2011 to the Fourth Republican Parliament on 4 June 2012. Recommendation No. 202 was submitted to Parliament on 3 October 2012. ***The Committee welcomes this progress and hopes that the Government will provide regularly the required information on the obligation to submit the instruments adopted by the Conference to Parliament.***

## Guinea

*Serious failure to submit.* ***The Committee refers to its previous comments and, in the same way as the Conference Committee, urges the Government to provide the information requested regarding the submission to the National Assembly of the 29 instruments adopted at 14 sessions held by the Conference between October 1996 and June 2012 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions).***

## Guinea-Bissau

The Committee recalls the communication received from the Government in August 2011 indicating that the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), has been approved by the Council of Ministers and is pending tabling in the National People's Assembly. The Government also intended to request support from the ILO Subregional Office in Dakar in order to conclude the process of submission of the pending instruments adopted by the Conference. *The Committee once again expresses its hope that the Government will soon be in a position to report that the instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th and 101st Sessions were submitted to the National People's Assembly.*

## Haiti

*Serious failure to submit. The Committee, in the same way as the Conference Committee, hopes that the Government will make every effort in the near future to be in a position to announce 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 22 sessions of the Conference held between 1989 and 2012.*

## Honduras

The Committee notes the information transmitted by the Government in October 2012 on the prospects for ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the examination of the Social Protection Floors Recommendation, 2012 (No. 202). It further notes with *interest* that the ratification of Convention No. 102 was registered on 1 November 2012. *The Committee hopes that the Government will provide all the required information on the submission to the Congress of the Republic of the instruments adopted by the Conference at its 94th, 95th, 96th, 99th, 100th and 101st Sessions, held between 2006 and 2012.*

## Iraq

*Serious failure to submit.* The Committee *regrets* that the Government has not replied to its previous observations. *The Committee hopes that the Government will soon be in a position to provide relevant 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 2012.*

## Ireland

The Committee notes that the instruments adopted by the Conference at its 100th Session were submitted to the Irish Parliament Committee on Jobs, Enterprise and Innovation on 14 June 2012. *The Committee refers to its previous comments and, in the same way as the Conference Committee, it urges the Government to provide information on the submission to the Oireachtas (Parliament) of the instruments adopted by the Conference at ten sessions held between 2000 and 2012 (88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 101st Sessions).*

## Jamaica

The Committee *regrets* that the Government has not replied to its previous comments. *The Committee invites the Government to provide the relevant information regarding the submission to Parliament of the instruments adopted by the Conference at its 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions (2004–12).*

## Jordan

The Committee notes the information provided by the Government in March and August 2012 indicating that the Ministry of Labour shall submit the instruments adopted by the Conference at its 100th Session to the national tripartite committee when the examination by the relevant official bodies is finalized. *The Committee refers to its previous comments and expresses again its hope that the instruments adopted by the Conference between 2004 and 2012 (93rd, 94th, 95th, 96th, 99th, 100th and 101st Sessions) will be submitted without delay to the National Assembly (Majlis Al-Umma).*



## Kazakhstan

The Committee notes that the ratification of Convention No. 183 was registered on 13 June 2012. *The Committee refers to its previous observations and requests 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 2012. It urges the Government to take steps without delay to submit the pending instruments to Parliament.*

## Kiribati

The Committee recalls that the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), was registered in October 2011. *In the same way as the Conference Committee, the Committee invites the Government to submit to Parliament the other 18 instruments adopted by the Conference at ten sessions held between 2000 and 2012 (88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th and 101st Sessions).*

## 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 requests that the Government complete the submission of the instruments adopted by the Conference at its 92nd, 94th, 95th, 96th, 99th, 100th and 101st 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 19 sessions held between 1992 and 2012.

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.*

## Liberia

The Committee notes the Government’s communication requesting technical assistance in this field received in May 2012. It hopes that the ILO will be able to provide the assistance requested. *In the same way as the Conference Committee, the Committee expresses again its hope that the Government will soon be in a position to submit to the National Legislature the 19 remaining instruments adopted by the Conference between 2000 and 2012, as well as the 1990 and 1995 Protocols.*

## Libya

*Serious failure to submit.* The Committee notes the Government’s communication dated 30 August 2012 indicating the difficult conditions experienced by the country under the previous regime and the current process intended to establish a democracy governed by justice, equality and the rule of law. The Committee also notes the commitment of the new authorities to comply with the obligations set out in the ILO Constitution. *The Committee hopes that the Government will soon be in a position to provide the information required on the submission to the competent authorities, within the meaning of article 19, paragraphs 5 and 6, of the ILO Constitution, of the Conventions, Recommendations and Protocols adopted by the Conference at 15 sessions held between 1996 and 2012 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions).*

## Madagascar

The Committee notes the statement provided by the Government in October 2012 indicating that it fully recognizes its obligation to submit the 13 instruments adopted by the Conference at seven sessions of the Conference held between 2002 and 2011. The Government indicates that the instruments will be submitted at the appropriate time when the socio-political crisis has ended. *The Committee hopes to receive relevant information on the submission to the National Assembly of the 14 instruments adopted by the Conference between 2002 and 2012.*

## Mali

*The Committee invites 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, 99th, 100th and 101st Sessions of the Conference.*

## Mauritania

In its previous comments, the Committee noted the communication of 28 September 2008 by which the Ministry of Employment calls upon the ministry responsible for communications and relations with Parliament to bring to Parliament's attention the Conventions and Recommendations adopted by the Conference at its 81st, 92nd and 96th Sessions. *The Committee again requests the Government to provide the information required on the submission to the National Assembly of Recommendations Nos 182 (81st Session, 1994) and 195 (92nd Session, 2004), the Protocols of 1995 (82nd Session) and 1996 (84th Session), and the instruments adopted at the 94th, 96th, 99th, 100th and 101st Sessions of the Conference.*

## Republic of Moldova

*The Committee requests the Government to supply information on the submission to Parliament of the instruments adopted by the Conference at its 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th and 101st Sessions.*

## Mozambique

*Serious failure to submit. The Committee, in the same way as the Conference Committee, hopes that the Government will be in a position to provide the relevant information on the submission to the Assembly of the Republic of the 31 instruments adopted by the Conference at the 15 sessions held between 1996 and 2012.*

## Niger

The Committee *regrets* that the Government has not replied to its previous comments. *The Committee requests the Government to provide the information required concerning the submission to the National Assembly of the 27 instruments adopted by the Conference at 14 sessions (83rd, 84th, 85th, 86th, 89th, 90th, 91st, 92nd, 94th, 95th (for the Employment Relationship Recommendation, 2006 (No. 198)), 96th, 99th, 100th and 101st Sessions) held between 1996 and 2012.*

## Nigeria

*The Committee requests the Government to provide the relevant information on the submission to the National Assembly of the instruments adopted by the Conference at its 94th, 96th, 99th, 100th and 101st Sessions.* It further recalls that, under Convention No. 144, effective prior tripartite consultations have to be held on the proposals made to the National Assembly when submitting the instruments adopted by the Conference.

## Pakistan

*Serious failure to submit.* The Committee notes the information provided by the Government in October 2012 indicating that the issue raised by the Committee in its previous observations on the failure to submit the instruments adopted by the Conference was discussed during a tripartite meeting held in the Ministry of Human Resource Development on 10 August 2012. *The Committee therefore asks the Government to submit to Majlis-e-Shoura (Parliament) the instruments adopted by the Conference at 16 sessions held between 1994 and 2012 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions). The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 35 pending instruments to Parliament.*

## Papua New Guinea

*Serious failure to submit.* The Committee notes the statement made by the Government representative in June 2012 to the Conference Committee indicating that there had been progress in the initial preparation for the submission of the 18 instruments pending, but given the large number of instruments that had to be submitted to the competent authorities further consultations should take place. ***In the same way as the Conference Committee, the Committee urges the Government to comply with this constitutional obligation and to submit without delay to the National Assembly the 19 instruments adopted by the Conference at 11 sessions held between 2000 and 2012.***

## Peru

*Serious failure to submit.* The Committee notes that the Government held an information seminar for various departments of the Executive on 6 November 2012 concerning the procedure to submit the instruments adopted by the Conference to the Congress of the Republic. ***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 2012.***

## Russian Federation

The Committee notes with *interest* that the ratification of Conventions Nos 173, 174 and of the Maritime Labour Convention, 2006 (MLC, 2006), was registered in February and August 2012. ***The Committee invites the Government to provide the required information on the submission to the State Duma of the 13 instruments adopted by the Conference at eight sessions held between 2001 and 2012 (89th, 90th, 92nd, 95th (Recommendation No. 198), 96th, 99th, 100th and 101st Sessions).***

## Rwanda

*Serious failure to submit.* The Committee takes note of the communication received in May 2012 indicating the Government's intention to take measures so Conventions, Recommendations and Protocols are submitted to Parliament. ***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 17 sessions held between 1993 and 2012 (80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions). The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 36 pending instruments to the National Assembly.***

## Saint Kitts and Nevis

*Submission to the National Assembly.* The Committee notes with *interest* that the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), was registered on 21 February 2012. It further notes the Government's communication, received in August 2012, indicating that the instruments adopted by the Conference were submitted to the Cabinet and that an official document will be sent to the ILO in the near future. The Committee recalls that the competent national authority should normally be the legislature, that is, in the case of Saint Kitts and Nevis, the National Assembly. ***The Committee therefore invites the Government to complete the submission procedure and provide the required information on the submission to the National Assembly of the instruments adopted by the Conference at 13 sessions held between 1996 and 2012 (83rd, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th and 101st Sessions).***

## Saint Lucia

*Serious failure to submit.* The Committee notes the brief communication submitted by the Government in August 2012 indicating that the instruments will be provided to the new Minister for Labour for onward submission. The Committee 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 the remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2012 (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, 99th, 100th and 101st Sessions). ***The Committee, in the same way as the Conference Committee, urges the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.***

## Saint Vincent and the Grenadines

The Committee 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 25 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 13 sessions held from 1995 to 2012 (82nd, 83rd, 85th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th and 101st Sessions).*

## Samoa

The Committee notes that, as of 7 March 2005, the Independent State of Samoa became a Member of the Organization. In accordance with article 19, paragraphs 5(a) and 6(a), of the ILO Constitution, the Office communicated to the Government the text of the Conventions and Recommendations adopted by the Conference at its 94th, 95th, 96th, 99th, 100th and 101st Sessions held between 2006 and 2012. *The Committee requests the Government to provide information on the submission of these instruments to the Legislative Assembly.* It recalls that the Government may request the technical assistance of the Office, if it so wishes, to help in achieving compliance with its obligations under article 19 of the Constitution relating to the submission of the instruments adopted by the Conference to the Legislative Assembly.

## Sao Tome and Principe

*Serious failure to submit.* The Committee *regrets* that the Government has not replied to its previous observation. The Committee recalls that the Government has not provided the required information on the submission to the competent authorities of 45 instruments adopted by the Conference between 1990 and 2012 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions). *The Committee requests the Government to make every effort to fulfil the constitutional obligation of submission and recalls that the ILO is available to provide the necessary technical assistance to give effect to this essential obligation.*

## Seychelles

*Serious failure to submit.* The Committee notes the statement made by the Government representative at the Conference Committee in June 2012. *In the same way as the Conference Committee, the Committee urges the Government to comply with this constitutional obligation and to quickly submit to the National Assembly the instruments adopted by the Conference at ten sessions held between 2001 and 2012.*

## Sierra Leone

*Serious failure to submit.* The Committee notes with *serious concern* 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 2012. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 95 pending instruments to Parliament.*

## Solomon Islands

*Serious failure to submit. ILO technical assistance.* The Committee notes with *interest* that the ratification of six fundamental Conventions was registered in April 2012. The Committee recalls that, under the relevant provisions of article 19, paragraphs 5 and 6, of the ILO Constitution, the Members of the Organization have undertaken to submit the instruments adopted by the Conference to the authority 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 therefore requests the Government to make every effort to comply with the constitutional obligation to submit the instruments adopted by the Conference between 1984 and 2012 to the National Parliament. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 59 pending instruments to the National Parliament.*

## 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 2012.*

## Sudan

*Serious failure to submit.* The Committee notes the statement made by the Government representative at the Conference Committee in June 2012 indicating that the country had faced an exceptional situation in recent years owing to the separation of South Sudan. It also notes the Government's commitment to take all necessary measures to submit the pending instruments to the competent authorities. ***The Committee, in the same way as the Conference Committee, urges the Government to take steps to submit the 36 pending instruments adopted by the Conference between 1994 and 2012 to the National Assembly.***

## Suriname

*Serious failure to submit.* The Committee notes the statement made by the Government representative in June 2012 to the Conference Committee recalling that the instruments adopted by the Conference at its 90th to 96th Sessions were submitted to the Council of Ministers. The Government also indicated that it was now in the process of restarting the submission procedures. ***In the same way as the Conference Committee, the Committee invites the Government to indicate if the instruments adopted by the Conference at its 90th to 96th Sessions have been submitted to the National Assembly. It also invites the Government to provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th and 101st Sessions (2010–12).***

## Syrian Arab Republic

The Committee notes with *regret* that the Government has not replied to its previous observations. The Committee recalls that 43 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 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, 99th, 100th and 101st Sessions have been submitted to the People's Council.***

## Tajikistan

*Serious failure to submit.* The Committee recalls the information provided by the Government in July 2011 indicating that the HIV and AIDS Recommendation, 2010 (No. 200), has been translated into Tajik and was submitted to the relevant ministries and national committees for its approval. In August 2012, the Government supplied new detailed information on the activities carried out with the participation of the social partners and various governmental departments to promote Recommendation No. 200 and HIV/AIDS prevention in the workplace. The Committee recalls that only Conventions are communicated for ratification in conformity with article 19(5)(a) of the ILO Constitution. It further recalls that the Government is required to provide information on the submission to the Supreme Council (*Majlisi Oli*) of the instruments adopted by the Conference at 13 sessions held between October 1996 and June 2012 (84th, 85th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions). ***The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 28 pending instruments to the Supreme Council (Majlisi Oli).***

## The former Yugoslav Republic of Macedonia

The Committee notes with *interest* that the ratification of Conventions Nos 177, 181, 183 and 187 was registered on 3 October 2012. The Government also indicated in February 2012 that reviewing unratified international labour Conventions was one of the topics on the agenda of the Economic and Social Council and that this revision was done prior to its submission to the Assembly. ***The Committee welcomes this approach and hopes that the Government will provide the other information concerning the submission to the Assembly of the Republic (Soberanie) of the other Conventions, Recommendations and Protocols adopted by the Conference at the sessions held between October 1996 and June 2012.***

## Togo

The Committee notes with *interest* that the ratification of Conventions Nos 81, 122, 129, 150, the Maritime Labour Convention, 2006 (MLC, 2006), and Convention No. 187 was registered on 14 March 2012. ***The Committee refers to its previous comments and invites the Government to provide all the relevant information on the submission to the National Assembly of the instruments adopted by the Conference at its 88th, 90th, 91st, 92nd, 95th (Recommendation No. 198), 96th, 99th, 100th and 101st Sessions (2010–12).***

## Turkmenistan

*Submission to the Mejlis (Parliament).* The Committee notes with *interest* that, on 25 May 2012, the Government submitted to the *Mejlis* (Parliament) information on the instruments adopted by the Conference between 1994 and 2011. ***The Committee welcomes this process and hopes that the Government will provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the Mejlis (Parliament).***

## Uganda

*Serious failure to submit.* The Committee notes the statement made by the Government representative in June 2012 to the Conference Committee indicating that the Government compiled and summarized the Conventions adopted by the Conference since 1994 in order to submit them to the competent authorities. ***The Committee requests the Government to provide the required information on the submission to Parliament of the instruments adopted by the Conference at 17 sessions held between 1994 and 2012 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions). In the same way as the Conference Committee, it urges the Government to take steps without delay to submit the pending instruments to Parliament.***

## Ukraine

The Committee notes the Government's communication received in October 2012 indicating that the ministries and departments concerned are examining the Domestic Workers Convention, 2011 (No. 189), and its corresponding Recommendation (No. 201). In its previous observations, the Committee had already noted that the instruments adopted by the Conference between 2003 and 2007 were under examination by the executive authority. The Government further stated, just as it did in May 2009, that these instruments were not submitted to the Supreme Rada of Ukraine since no proposals were made with regard to their ratification.

The Committee recalls 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 requests that the Government 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 12 instruments adopted at the 91st, 92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions of the Conference (2003–12).***

## Uzbekistan

*Submission to the Supreme Assembly (Oliy Majlis).* The Committee notes with *interest* that, on 3 April 2012, the Government submitted to the Legislative Chamber of the Supreme Assembly (*Oliy Majlis*) information on the instruments adopted by the Conference between 1993 and 2011. Recommendation No. 202 was submitted to the Supreme Assembly on 13 September 2012. ***The Committee welcomes this progress and hopes that the Government will provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the Supreme Assembly.***

## Vanuatu

The Committee recalls that, as of 22 May 2003, Vanuatu became a Member of the Organization. It further recalls that the ratification by Vanuatu of the eight fundamental Conventions was registered in July 2006. ***The Committee asks the Government to provide information on the submission to the Parliament of Vanuatu of the five Conventions and seven Recommendations adopted by the Conference at seven sessions held between 2003–12 (92nd, 94th, 95th, 96th, 99th, 100th and 101st Sessions).*** It recalls that the Government may request the technical assistance of the Office to help

in achieving compliance with the obligations under article 19 of the Constitution relating to the submission of the instruments adopted by the Conference to the Parliament of Vanuatu.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Argentina, Austria, Belgium, Benin, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Eritrea, Finland, France, Gambia, Germany, Greece, Grenada, Guatemala, Guyana, Hungary, Iceland, Islamic Republic of Iran, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Luxembourg, Malawi, Malaysia, Republic of Maldives, Malta, Mexico, Mongolia, Montenegro, Myanmar, Namibia, Nepal, Netherlands, Nicaragua, Norway, Oman, Panama, Paraguay, Portugal, Qatar, San Marino, Senegal, Slovenia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Thailand, Timor-Leste, Trinidad and Tobago, United Arab Emirates, Uruguay, Bolivarian Republic of Venezuela, Yemen, Zambia.*





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## ***Appendices***



**Appendix I. Table of reports received on ratified  
Conventions as of 7 December 2012**  
(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

(articles 22 and 35 of the Constitution)

### Reports received as of 7 December 2012

*Note: First reports are indicated in parentheses.*

<b>Afghanistan</b>	<b>7 reports requested</b>
<ul style="list-style-type: none"> <li>· 3 reports received: Conventions Nos. 100, 111, 137</li> <li>· 4 reports not received: Conventions Nos. 138, 144, 159, 182</li> </ul>	
<b>Albania</b>	<b>15 reports requested</b>
All reports received: Conventions Nos. 6, 11, 81, 88, 97, 100, 102, 111, 122, 129, 143, 156, 168, 174, 176	
<b>Algeria</b>	<b>18 reports requested</b>
<ul style="list-style-type: none"> <li>· 4 reports received: Conventions Nos. 42, 77, 78, 87</li> <li>· 14 reports not received: Conventions Nos. 17, 19, 24, 29, 32, 44, 81, 97, 100, 111, 119, 120, 127, 155</li> </ul>	
<b>Angola</b>	<b>11 reports requested</b>
<ul style="list-style-type: none"> <li>· 2 reports received: Conventions Nos. 81, 88</li> <li>· 9 reports not received: Conventions Nos. 12, 17, 18, 19, 27, 29, 100, 105, 111</li> </ul>	
<b>Antigua and Barbuda</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 81, 100, 111, 155	
<b>Argentina</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 27, 32, 42, 81, 87, 100, 111, 129	
<b>Armenia</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 17, 18, 81, 97, 98, 100, 111, 122, 143, 144, 174, 176	
<b>Australia</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 12, 19, 27, 42, 81, 100, 111, 137, 155	
<b>Australia - Norfolk Island</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 12, 19, 27, 42, 100	
<b>Austria</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 24, 25, 27, 42, 81, 100, 102, 111, 128	
<b>Azerbaijan</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 27, 32, 81, 100, 111, 120, 129, 156, 183	
<b>Bahamas</b>	<b>18 reports requested</b>
<ul style="list-style-type: none"> <li>· 8 reports received: Conventions Nos. 17, 81, 88, 95, 111, 138, 144, 182</li> <li>· 10 reports not received: Conventions Nos. 11, 12, 19, 42, 87, 97, 98, 100, 105, 185</li> </ul>	
<b>Bahrain</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 81, 111	
<b>Bangladesh</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 18, 19, 27, 32, 81, 87, 100, 111, 118	
<b>Barbados</b>	<b>22 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 12, 17, 19, 26, 42, 81, 87, 90, 94, 95, 97, 98, 100, 102, 105, 108, 111, 115, 118, 128, 144, 147</li> </ul>	
<b>Belarus</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 27, 32, 81, 87, 100, 111, 144	

<b>Belgium</b>	7 reports requested
All reports received: Conventions Nos. 27, 32, 81, 97, 100, 111, 129	
<b>Belize</b>	8 reports requested
All reports received: Conventions Nos. 12, 19, 42, 81, 97, 100, 111, 155	
<b>Benin</b>	6 reports requested
All reports received: Conventions Nos. 18, 81, 100, 111, 143, 147	
<b>Bolivia, Plurinational State of</b>	10 reports requested
<ul style="list-style-type: none"> <li>· 7 reports received: Conventions Nos. 19, 81, 100, 111, 118, 128, 129</li> <li>· 3 reports not received: Conventions Nos. 102, 121, 130</li> </ul>	
<b>Bosnia and Herzegovina</b>	30 reports requested
All reports received: Conventions Nos. 12, 19, 24, 25, 27, 32, 81, 94, 97, 100, 102, 111, 119, 121, 129, 136, 139, 143, 148, 155, 161, 162, 174, 175, 176, 177, 181, 183, 184, 187	
<b>Botswana</b>	8 reports requested
All reports received: Conventions Nos. 19, 95, 98, 100, 111, 144, 151, 173	
<b>Brazil</b>	14 reports requested
<ul style="list-style-type: none"> <li>· 10 reports received: Conventions Nos. 12, 19, 42, 81, 97, 102, 118, 137, 152, 168</li> <li>· 4 reports not received: Conventions Nos. 94, 100, 111, 151</li> </ul>	
<b>Bulgaria</b>	29 reports requested
<ul style="list-style-type: none"> <li>· 17 reports received: Conventions Nos. 6, 11, 26, 77, 78, 79, 87, 94, 98, 100, 111, 113, 124, 144, 156, 173, 177</li> <li>· 12 reports not received: Conventions Nos. 12, 17, 19, 24, 25, 27, 32, 42, 44, 81, 95, 102</li> </ul>	
<b>Burkina Faso</b>	30 reports requested
<ul style="list-style-type: none"> <li>· 26 reports received: Conventions Nos. 6, 13, 17, 18, 19, 29, 81, 87, 95, 97, 98, 100, 105, 111, 122, 129, 131, 138, 141, 142, 144, 159, 161, 170, 182, 184</li> <li>· 4 reports not received: Conventions Nos. 11, 135, 143, 173</li> </ul>	
<b>Burundi</b>	25 reports requested
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 1, 11, 12, 14, 17, 19, 26, 27, 29, 42, 52, 62, 81, 87, 89, 90, 94, 98, 100, 101, 105, 111, 135, 138, 144</li> </ul>	
<b>Cambodia</b>	6 reports requested
<ul style="list-style-type: none"> <li>· 4 reports received: Conventions Nos. 29, 87, 100, 150</li> <li>· 2 reports not received: Conventions Nos. 111, 122</li> </ul>	
<b>Cameroon</b>	6 reports requested
All reports received: Conventions Nos. 19, 81, 97, 100, 111, 143	
<b>Canada</b>	6 reports requested
All reports received: Conventions Nos. 27, 32, 87, 100, 111, 162	
<b>Cape Verde</b>	6 reports requested
All reports received: Conventions Nos. 17, 19, 81, 100, 111, 118	
<b>Central African Republic</b>	8 reports requested
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 17, 18, 19, 81, 100, 111, 118, 169</li> </ul>	
<b>Chad</b>	16 reports requested
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 6, 11, 13, 26, 29, 81, 87, 95, 98, 100, 105, 111, 138, 144, 173, 182</li> </ul>	
<b>Chile</b>	14 reports requested
All reports received: Conventions Nos. 12, 19, 24, 25, 27, 32, 35, 36, 37, 38, 100, 111, 121, 161	

<b>China</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 19, 27, 32, 100, 111, 155, 167, 170	
<b>China - Hong Kong Special Administrative Region</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 32, 42, 81, 97	
<b>China - Macau Special Administrative Region</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 17, 18, 19, 27, 81, 100, 111	
<b>Colombia</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 12, 17, 18, 19, 24, 25, 81, 87, 100, 111, 129, 144, 162, 169	
<b>Comoros</b>	<b>21 reports requested</b>
· No reports received: Conventions Nos. 6, 11, 12, 13, 14, 17, 19, 29, 42, 77, 81, 87, 89, 98, 99, 100, 105, 106, 111, 138, 182	
<b>Congo</b>	<b>9 reports requested</b>
· 8 reports received: Conventions Nos. 11, 13, 100, 105, 111, 119, 152, 182	
· 1 report not received: Convention No. 81	
<b>Costa Rica</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 1, 81, 96, 98, 100, 102, 111, 129, 130, 137	
<b>Côte d'Ivoire</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 6, 11, 18, 19, 81, 100, 111, 129, 133	
<b>Croatia</b>	<b>22 reports requested</b>
All reports received: Conventions Nos. 11, 12, 19, 24, 25, 27, 32, 81, 87, 90, 100, 102, 105, 111, 113, 119, 121, 122, 129, 148, 156, 162	
<b>Cuba</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 27, 42, 81, 87, 97, 100, 111, 137, 152	
<b>Cyprus</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 81, 97, 100, 111, 143, 152	
<b>Czech Republic</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 27, 100, 111, 128	
<b>Democratic Republic of the Congo</b>	<b>20 reports requested</b>
· No reports received: Conventions Nos. 11, 12, 19, 26, 27, 29, 81, 95, 100, 102, 105, 111, 118, 120, 121, 135, 138, 144, 150, 158	
<b>Denmark</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 11, 12, 27, 42, 81, 100, 102, 111, 118, 126, 129, 130, 141, 152	
<b>Denmark - Faeroe Islands</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 12, 18, 19, 27	
<b>Denmark - Greenland</b>	<b>7 reports requested</b>
· 5 reports received: Conventions Nos. 5, 6, 11, 19, 87	
· 2 reports not received: Conventions Nos. 122, 126	
<b>Djibouti</b>	<b>48 reports requested</b>
· No reports received: Conventions Nos. 1, 9, 11, 12, 13, 16, 17, 18, 19, 22, 23, 24, 26, 29, 37, 38, 53, 55, 56, 63, 69, 71, 73, 77, 78, 81, 87, 88, 94, 95, 96, 98, 99, 100, 101, 105, 106, 108, 111, 115, 120, 122, 124, 125, 126, 138, 144, 182	

<b>Dominica</b>	<b>8 reports requested</b>
· 3 reports received: Conventions Nos. 12, 81, 100	
· 5 reports not received: Conventions Nos. 19, 94, 97, 98, 111	
<b>Dominican Republic</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 19, 26, 29, 77, 81, 95, 98, 100, 111, 144, 167	
<b>Ecuador</b>	<b>11 reports requested</b>
· No reports received: Conventions Nos. 81, 97, 100, 102, 111, 118, 121, 123, 128, 130, 152	
<b>Egypt</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 17, 18, 19, 81, 87, 100, 111, 118, 129, 137, 152	
<b>El Salvador</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 12, 81, 100, 111, 129	
<b>Equatorial Guinea</b>	<b>14 reports requested</b>
· No reports received: Conventions Nos. 1, 14, 29, 30, 68, 87, 92, 98, 100, 103, 105, 111, 138, 182	
<b>Eritrea</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 87, 98, 100, 111	
<b>Estonia</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 27, 81, 100, 111, 129	
<b>Ethiopia</b>	<b>5 reports requested</b>
· 4 reports received: Conventions Nos. 87, 100, 111, 156	
· 1 report not received: Convention No. 11	
<b>Fiji</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 12, 19, 81, 87, 100, 111, 122, 129	
<b>Finland</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 12, 19, 27, 81, 100, 111, 118, 121, 128, 129, 130, 137, 152, 168	
<b>France</b>	<b>12 reports requested</b>
· 10 reports received: Conventions Nos. 27, 81, 97, 100, 111, 113, 114, 125, 126, 129	
· 2 reports not received: Conventions Nos. 137, 152	
<b>France - French Polynesia</b>	<b>32 reports requested</b>
All reports received: Conventions Nos. 5, 6, 10, 11, 12, 17, 19, 24, 33, 37, 38, 42, 44, 77, 78, 81, 87, 94, 95, 98, 100, 111, 115, 122, 123, 124, 125, 126, 129, 131, 141, 144	
<b>France - French Southern and Antarctic Territories</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 98, 111	
<b>France - New Caledonia</b>	<b>12 reports requested</b>
· No reports received: Conventions Nos. 12, 17, 19, 24, 42, 44, 81, 100, 111, 115, 120, 129	
<b>Gabon</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 12, 19, 29, 105, 138, 144, 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, 52, 98, 105, 138, 182	

<b>Germany</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 27, 29, 97, 105, 118, 138, 144, 152, 182, 187	
<b>Ghana</b>	<b>17 reports requested</b>
· 3 reports received: Conventions Nos. 11, 26, 87	
· 14 reports not received: Conventions Nos. 19, 29, 74, 81, 90, 92, 94, 98, 100, 105, 111, 115, 119, 182	
<b>Greece</b>	<b>27 reports requested</b>
All reports received: Conventions Nos. 11, 13, 17, 19, 42, 77, 78, 87, 88, 90, 95, 98, 100, 102, 111, 122, 124, 126, 136, 141, 144, 150, 154, 156, 159, 182	
<b>Grenada</b>	<b>20 reports requested</b>
· 7 reports received: Conventions Nos. 11, 16, 81, 87, 100, 105, 144	
· 13 reports not received: Conventions Nos. 12, 19, 26, 29, 94, 95, 97, 98, 99, 108, 111, 138, 182	
<b>Guatemala</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 19, 29, 87, 97, 105, 118, 127, 138, 144, 161, 162, 182	
<b>Guinea</b>	<b>48 reports requested</b>
· 22 reports received: Conventions Nos. 13, 16, 26, 29, 81, 87, 95, 98, 99, 100, 111, 114, 119, 120, 122, 132, 134, 138, 144, 149, 150, 182	
· 26 reports not received: Conventions Nos. 3, 11, 14, 45, 62, 89, 90, 94, 105, 113, 115, 117, 118, 121, 133, 135, 136, 139, 140, 142, 143, 148, 151, 152, 156, 159	
<b>Guinea-Bissau</b>	<b>10 reports requested</b>
· 2 reports received: Conventions Nos. 138, 182	
· 8 reports not received: Conventions Nos. 12, 17, 18, 19, 27, 29, 81, 105	
<b>Guyana</b>	<b>36 reports requested</b>
· 15 reports received: Conventions Nos. 2, 19, 42, 45, 81, 97, 98, 136, 142, 144, 150, 166, 172, 175, 182	
· 21 reports not received: Conventions Nos. 11, 12, 29, 87, 94, 95, 100, 105, 108, 111, 115, 129, 131, 135, 137, 138, 139, 140, 141, 149, 151	
<b>Haiti</b>	<b>15 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 24, 25, 29, 42, 87, 90, 98, 100, 105, 111, 138, 182	
<b>Honduras</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 27, 29, 32, 42, 87, 98, 105, 138, 182	
<b>Hungary</b>	<b>26 reports requested</b>
All reports received: Conventions Nos. 6, 12, 17, 19, 24, 26, 27, 29, 42, 77, 78, 87, 95, 98, 99, 100, 105, 111, 122, 124, 138, 141, 144, 160, 175, 182	
<b>Iceland</b>	<b>16 reports requested</b>
· 14 reports received: Conventions Nos. 11, 29, 81, 87, 98, 100, 105, 111, 122, 129, 138, 144, 156, 159	
· 2 reports not received: Conventions Nos. 102, 182	
<b>India</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 19, 27, 29, 32, 42, 105, 118, 122, 127, 144, 174	
<b>Indonesia</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 19, 27, 29, 87, 105, 138, 144, 182	
<b>Iran, Islamic Republic of</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 19, 29, 95, 105, 182	
<b>Iraq</b>	<b>19 reports requested</b>
All reports received: Conventions Nos. 11, 17, 19, 27, 29, 42, 77, 78, 98, 105, 118, 119, 120, 135, 137, 138, 144, 152, 182	
<b>Ireland</b>	<b>37 reports requested</b>
· 30 reports received: Conventions Nos. 6, 11, 12, 14, 26, 29, 62, 81, 87, 96, 98, 99, 100, 102, 105, 111, 118, 121, 122, 124, 132, 138, 139, 144, 155, 160, 176, 177, 180, 182	
· 7 reports not received: Conventions Nos. 19, 27, 32, 88, 142, 159, 179	



<b>Israel</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 19, 29, 97, 102, 105, 118, 138, 144, 160, 182	
<b>Italy</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos. 27, 29, 97, 105, 137, 138, 143, 144, 182</li> <li>· 1 report not received: Convention No. 152</li> </ul>	
<b>Jamaica</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 19, 29, 94, 97, 105, 138, 144, 152, 182	
<b>Japan</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 19, 27, 29, 102, 121, 131, 138, 144, 181, 182	
<b>Jordan</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 29, 105, 118, 138, 144, 182	
<b>Kazakhstan</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos. 29, 100, 105, 111, 122, 144</li> <li>· 4 reports not received: Conventions Nos. 138, 167, 182, 185</li> </ul>	
<b>Kenya</b>	<b>17 reports requested</b>
All reports received: Conventions Nos. 17, 19, 27, 29, 32, 81, 94, 97, 99, 105, 129, 131, 137, 138, 143, 144, 182	
<b>Kiribati</b>	<b>8 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138, 182</li> </ul>	
<b>Korea, Republic of</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 19, 111, 131, 138, 144, 182	
<b>Kuwait</b>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· 5 reports received: Conventions Nos. 29, 136, 138, 144, 182</li> <li>· 1 report not received: Convention No. 105</li> </ul>	
<b>Kyrgyzstan</b>	<b>45 reports requested</b>
<ul style="list-style-type: none"> <li>· 36 reports received: Conventions Nos. 16, 17, 23, 27, 29, 32, 69, 73, 77, 78, 79, 81, 87, 92, 95, 97, 100, 105, 108, 111, 113, 120, 122, 124, 126, 131, 133, 134, 144, 147, 149, 150, 154, 159, 160, 182</li> <li>· 9 reports not received: Conventions Nos. 11, 90, 98, 115, 119, 138, 148, 157, 184</li> </ul>	
<b>Lao People's Democratic Republic</b>	<b>5 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 6, 29, 138, 144, 182</li> </ul>	
<b>Latvia</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 6, 29, 105, 131, 138, 144, 173, 182	
<b>Lebanon</b>	<b>16 reports requested</b>
<ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos. 17, 19, 29, 81, 105, 122</li> <li>· 10 reports not received: Conventions Nos. 59, 71, 77, 78, 90, 95, 131, 138, 152, 182</li> </ul>	
<b>Lesotho</b>	<b>7 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 11, 26, 29, 105, 138, 144, 182</li> </ul>	
<b>Liberia</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· 10 reports received: Conventions Nos. 23, 29, 81, 87, 98, 105, 111, 112, 113, 144</li> <li>· 4 reports not received: Conventions Nos. 108, 114, 150, 182</li> </ul>	
<b>Libya</b>	<b>15 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 29, 53, 81, 88, 95, 102, 105, 118, 121, 122, 128, 130, 131, 138, 182</li> </ul>	

<b>Lithuania</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos. 29, 79, 90, 105, 131, 138, 144, 173, 182</li> <li>· 1 report not received: Convention No. 27</li> </ul>	
<b>Luxembourg</b>	<b>27 reports requested</b>
All reports received: Conventions Nos. 9, 16, 22, 23, 26, 27, 29, 53, 68, 69, 73, 74, 77, 78, 79, 90, 92, 105, 111, 129, 133, 138, 147, 166, 178, 180, 182	
<b>Madagascar</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 6, 19, 26, 29, 95, 97, 105, 124, 138, 144, 173, 182	
<b>Malawi</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 19, 26, 29, 81, 97, 98, 99, 105, 129, 138, 144, 150, 159, 182</li> </ul>	
<b>Malaysia</b>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· 4 reports received: Conventions Nos. 29, 123, 138, 182</li> <li>· 2 reports not received: Conventions Nos. 95, 144</li> </ul>	
<b>Malaysia - Malaysia - Peninsular</b>	<b>1 report requested</b>
All reports received: Convention No. 19	
<b>Malaysia - Malaysia - Sabah</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 94, 97	
<b>Malaysia - Malaysia - Sarawak</b>	<b>2 reports requested</b>
<ul style="list-style-type: none"> <li>· 1 report received: Convention No. 19</li> <li>· 1 report not received: Convention No. 94</li> </ul>	
<b>Mali</b>	<b>12 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 6, 11, 17, 18, 19, 26, 29, 95, 105, 138, 144, 182</li> </ul>	
<b>Malta</b>	<b>20 reports requested</b>
<ul style="list-style-type: none"> <li>· 12 reports received: Conventions Nos. 11, 12, 19, 29, 42, 81, 105, 129, 138, 141, 148, 182</li> <li>· 8 reports not received: Conventions Nos. 32, 77, 78, 95, 96, 98, 124, 131</li> </ul>	
<b>Mauritania</b>	<b>13 reports requested</b>
<ul style="list-style-type: none"> <li>· 7 reports received: Conventions Nos. 26, 29, 81, 90, 94, 95, 105</li> <li>· 6 reports not received: Conventions Nos. 33, 112, 114, 122, 138, 182</li> </ul>	
<b>Mauritius</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· 7 reports received: Conventions Nos. 19, 32, 94, 97, 138, 160, 182</li> <li>· 7 reports not received: Conventions Nos. 26, 29, 95, 99, 105, 137, 144</li> </ul>	
<b>Mexico</b>	<b>16 reports requested</b>
<ul style="list-style-type: none"> <li>· 15 reports received: Conventions Nos. 27, 29, 90, 95, 102, 105, 123, 124, 131, 144, 150, 152, 155, 173, 182</li> <li>· 1 report not received: Convention No. 71</li> </ul>	
<b>Moldova, Republic of</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos. 29, 95, 97, 105, 131, 138, 144, 182, 187</li> <li>· 1 report not received: Convention No. 152</li> </ul>	
<b>Mongolia</b>	<b>7 reports requested</b>
<ul style="list-style-type: none"> <li>· 3 reports received: Conventions Nos. 29, 105, 111</li> <li>· 4 reports not received: Conventions Nos. 123, 138, 144, 182</li> </ul>	
<b>Montenegro</b>	<b>13 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos. 29, 90, 97, 105, 131, 138, 143, 144, 182</li> <li>· 4 reports not received: Conventions Nos. 27, 32, 114, 126</li> </ul>	
<b>Morocco</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 26, 27, 29, 94, 99, 105, 138, 182	

<b>Mozambique</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 29, 105, 138, 144, 182	
<b>Myanmar</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 6, 19, 26, 27, 29, 87	
<b>Namibia</b>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· 3 reports received: Conventions Nos. 138, 144, 182</li> <li>· 3 reports not received: Conventions Nos. 29, 100, 105</li> </ul>	
<b>Nepal</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 29, 105, 131, 138, 144, 182	
<b>Netherlands</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 27, 29, 90, 94, 95, 97, 105, 124, 131, 138, 144, 152, 159, 182	
<b>Netherlands - Aruba</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 29, 90, 94, 95, 105, 131, 138, 144, 182	
<b>Netherlands - Caribbean Part of the Netherlands</b>	<b>5 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 10, 33, 90, 94, 95</li> </ul>	
<b>Netherlands - Curaçao</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 10, 11, 12, 17, 25, 29, 33, 42, 81, 90, 94, 95, 105, 118	
<b>Netherlands - Sint Maarten</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 10, 29, 33, 90, 94, 95, 105	
<b>New Zealand</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 10, 26, 29, 32, 59, 97, 99, 105, 144, 182	
<b>New Zealand - Tokelau</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 29, 105	
<b>Nicaragua</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· 13 reports received: Conventions Nos. 6, 27, 29, 77, 95, 105, 111, 131, 137, 138, 144, 169, 182</li> <li>· 1 report not received: Convention No. 78</li> </ul>	
<b>Niger</b>	<b>9 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 6, 29, 81, 95, 105, 131, 138, 148, 182</li> </ul>	
<b>Nigeria</b>	<b>30 reports requested</b>
<ul style="list-style-type: none"> <li>· 20 reports received: Conventions Nos. 19, 29, 32, 45, 87, 88, 97, 98, 100, 105, 111, 123, 133, 134, 138, 144, 155, 178, 179, 182</li> <li>· 10 reports not received: Conventions Nos. 8, 11, 16, 26, 81, 94, 95, 137, 159, 185</li> </ul>	
<b>Norway</b>	<b>16 reports requested</b>
All reports received: Conventions Nos. 26, 27, 29, 90, 94, 95, 97, 105, 129, 137, 138, 143, 144, 152, 168, 182	
<b>Pakistan</b>	<b>17 reports requested</b>
All reports received: Conventions Nos. 11, 18, 19, 27, 29, 32, 59, 81, 87, 90, 96, 98, 105, 118, 138, 159, 182	
<b>Panama</b>	<b>15 reports requested</b>
<ul style="list-style-type: none"> <li>· 12 reports received: Conventions Nos. 26, 27, 32, 42, 77, 78, 81, 87, 95, 98, 124, 182</li> <li>· 3 reports not received: Conventions Nos. 88, 94, 122</li> </ul>	
<b>Papua New Guinea</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 26, 27, 87, 98, 99, 122	

<b>Paraguay</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· 13 reports received: Conventions Nos. 26, 59, 77, 78, 87, 90, 95, 98, 99, 122, 123, 124, 169</li> <li>· 1 report not received: Convention No. 79</li> </ul>	
<b>Peru</b>	<b>24 reports requested</b>
All reports received: Conventions Nos. 24, 25, 26, 27, 35, 36, 37, 38, 39, 40, 59, 71, 77, 78, 79, 87, 90, 98, 99, 112, 113, 122, 152, 176	
<b>Philippines</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 77, 87, 90, 94, 95, 97, 98, 99, 122, 143	
<b>Poland</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 27, 77, 78, 79, 81, 87, 90, 95, 98, 99, 122, 124, 137	
<b>Portugal</b>	<b>13 reports requested</b>
<ul style="list-style-type: none"> <li>· 12 reports received: Conventions Nos. 6, 27, 77, 78, 95, 97, 98, 122, 124, 131, 137, 143</li> <li>· 1 report not received: Convention No. 87</li> </ul>	
<b>Romania</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 1, 6, 27, 29, 87, 95, 98, 105, 122, 131, 137	
<b>Russian Federation</b>	<b>18 reports requested</b>
All reports received: Conventions Nos. 27, 77, 78, 79, 87, 90, 95, 98, 113, 119, 122, 124, 132, 135, 137, 152, 154, 162	
<b>Rwanda</b>	<b>20 reports requested</b>
<ul style="list-style-type: none"> <li>· 16 reports received: Conventions Nos. 11, 12, 17, 19, 29, 62, 81, 87, 94, 98, 100, 105, 111, 118, 138, 182</li> <li>· 4 reports not received: Conventions Nos. 26, 42, 122, 123</li> </ul>	
<b>Saint Kitts and Nevis</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 87, 98	
<b>Saint Lucia</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 5, 19, 26, 87, 94, 95, 97, 98, 158	
<b>Saint Vincent and the Grenadines</b>	<b>8 reports requested</b>
<ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos. 26, 87, 98, 122, 129, 144</li> <li>· 2 reports not received: Conventions Nos. 94, 95</li> </ul>	
<b>Samoa</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 87, 98	
<b>San Marino</b>	<b>19 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 119, 138, 140, 143, 148, 150, 151, 154, 156, 159, 160, 161, 182</li> </ul>	
<b>Sao Tome and Principe</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 17, 18, 19, 29, 81, 87, 88, 98, 100, 105, 106, 111, 138, 144, 159, 182, 184</li> </ul>	
<b>Saudi Arabia</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 90, 105, 111, 123	
<b>Senegal</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 11, 12, 19, 29, 81, 98, 102, 105, 121, 125, 138, 182	
<b>Serbia</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 27, 32, 87, 90, 97, 98, 122, 131, 143, 144, 183	

<b>Seychelles</b>	<b>9 reports requested</b>
· 6 reports received: Conventions Nos. 26, 87, 98, 99, 161, 182	
· 3 reports not received: Conventions Nos. 147, 152, 180	
<b>Sierra Leone</b>	<b>24 reports requested</b>
· No reports received: Conventions Nos. 8, 16, 17, 19, 22, 26, 29, 32, 45, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144	
<b>Singapore</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 32, 94, 98, 144	
<b>Slovakia</b>	<b>39 reports requested</b>
· 26 reports received: Conventions Nos. 11, 12, 17, 19, 26, 77, 78, 87, 95, 99, 102, 120, 124, 128, 130, 138, (151), (158), 161, 163, 164, 167, 173, 176, 181, (187)	
· 13 reports not received: Conventions Nos. 27, 29, 42, 90, 98, 105, 122, 123, 139, 148, 156, 159, 182	
<b>Slovenia</b>	<b>27 reports requested</b>
· 19 reports received: Conventions Nos. 12, 19, 24, 25, 29, 81, 87, 90, 95, 98, 105, 113, 114, 121, 122, 126, 131, 158, 182	
· 8 reports not received: Conventions Nos. 27, 32, 97, 143, 151, 173, 174, 183	
<b>Solomon Islands</b>	<b>5 reports requested</b>
· No reports received: Conventions Nos. 19, 26, 84, 94, 95	
<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>3 reports requested</b>
All reports received: Conventions Nos. 26, 87, 98	
<b>Spain</b>	<b>22 reports requested</b>
All reports received: Conventions Nos. 19, 27, 77, 78, 79, 87, 88, 90, 94, 95, 97, 98, 114, 122, 123, 124, 131, 137, 152, 158, 173, 185	
<b>Sri Lanka</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 87, 90, 95, 98, 100, 131	
<b>Sudan</b>	<b>4 reports requested</b>
· No reports received: Conventions Nos. 26, 95, 98, 122	
<b>Suriname</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 17, 27, 42, 87, 94, 95, 98, 122	
<b>Swaziland</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 87, 90, 94, 95, 98, 123, 131	
<b>Sweden</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 27, 87, 98, 122, 137, 143, 152	
<b>Switzerland</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 6, 26, 27, 87, 98, 173	
<b>Syrian Arab Republic</b>	<b>10 reports requested</b>
· 2 reports received: Conventions Nos. 87, 98	
· 8 reports not received: Conventions Nos. 94, 95, 100, 105, 123, 124, 131, 170	

<b>Tajikistan</b>	<b>17 reports requested</b>
· No reports received: Conventions Nos. 27, 32, 77, 78, 79, 87, 90, 95, 97, 98, 113, 119, 120, 122, 124, 126, 143	
<b>Tanzania , United Republic of</b>	<b>8 reports requested</b>
· 6 reports received: Conventions Nos. 59, 87, 95, 98, 131, 152	
· 2 reports not received: Conventions Nos. 94, 137	
<b>Tanzania , United Republic of - Tanzania. Tanganyika</b>	<b>1 report requested</b>
All reports received: Convention No. 81	
<b>Tanzania , United Republic of - Tanzania. Zanzibar</b>	<b>1 report requested</b>
All reports received: Convention No. 97	
<b>Thailand</b>	<b>6 reports requested</b>
· 2 reports received: Conventions Nos. 29, 105	
· 4 reports not received: Conventions Nos. 19, 122, 138, 182	
<b>The former Yugoslav Republic of Macedonia</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 27, 32, 87, 90, 94, 97, 98, 122, 131, 143	
<b>Timor-Leste</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 29, 87, 98, 182	
<b>Togo</b>	<b>9 reports requested</b>
· 8 reports received: Conventions Nos. 6, 26, 87, 95, 98, 105, 138, 143	
· 1 report not received: Convention No. 182	
<b>Trinidad and Tobago</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 87, 97, 98, 144	
<b>Tunisia</b>	<b>13 reports requested</b>
· 5 reports received: Conventions Nos. 29, 87, 122, 138, 182	
· 8 reports not received: Conventions Nos. 26, 77, 88, 90, 95, 98, 99, 124	
<b>Turkey</b>	<b>10 reports requested</b>
· 1 report received: Convention No. 87	
· 9 reports not received: Conventions Nos. 26, 77, 94, 95, 98, 99, 122, 123, 152	
<b>Turkmenistan</b>	<b>3 reports requested</b>
All reports received: Conventions Nos. 87, 98, 182	
<b>Uganda</b>	<b>22 reports requested</b>
· 7 reports received: Conventions Nos. 17, 26, 29, 94, 95, 122, 158	
· 15 reports not received: Conventions Nos. 12, 19, 45, 81, 87, 98, 100, 105, 111, 123, 124, 143, 144, 154, 182	
<b>Ukraine</b>	<b>16 reports requested</b>
All reports received: Conventions Nos. 27, 29, 32, 77, 78, 79, 87, 90, 95, 98, 122, 124, 131, 139, 161, 173	
<b>United Kingdom</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 32, 87, 97, 98, 122, 124	
<b>United Kingdom - Anguilla</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 26, 29, 59, 87, 94, 97, 98, 99	
<b>United Kingdom - Bermuda</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 10, 59, 87, 94, 98	
<b>United Kingdom - British Virgin Islands</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 10, 11, 12, 17, 19, 23, 26, 59, 82, 87, 94, 97, 98	

<b>United Kingdom - Falkland Islands (Malvinas)</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 10, 17, 32, 59, 87, 98	
<b>United Kingdom - Gibraltar</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 11, 29, 59, 81, 87, 98, 105	
<b>United Kingdom - Guernsey</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 5, 10, 32, 87, 97, 98, 122	
<b>United Kingdom - Isle of Man</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 5, 10, 32, 87, 97, 98, 99, 122	
<b>United Kingdom - Jersey</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 5, 10, 32, 87, 97, 98, 99	
<b>United Kingdom - Montserrat</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 26, 59, 87, 95, 97, 98	
<b>United Kingdom - St Helena</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 10, 29, 59, 87, 98, 182	
<b>Uruguay</b>	<b>18 reports requested</b>
All reports received: Conventions Nos. 27, 32, 77, 78, 79, 87, 90, 94, 95, 97, 98, 102, 121, 122, 129, 131, 137, 181	
<b>Uzbekistan</b>	<b>3 reports requested</b>
All reports received: Conventions Nos. 98, 122, 182	
<b>Vanuatu</b>	<b>6 reports requested</b>
· No reports received: Conventions Nos. 87, 98, 100, 111, 182, 185	
<b>Venezuela, Bolivarian Republic of</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 6, 26, 27, 81, 87, 95, 97, 98, 122, 143, 155	
<b>Viet Nam</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 6, 27, 123, 124	
<b>Yemen</b>	<b>21 reports requested</b>
· 13 reports received: Conventions Nos. 16, 29, 81, 87, 98, 100, 105, 111, 122, 138, 144, 182, 185	
· 8 reports not received: Conventions Nos. 19, 58, 59, 94, 95, 131, 156, 158	
<b>Zambia</b>	<b>20 reports requested</b>
· 4 reports received: Conventions Nos. 87, 95, 98, 159	
· 16 reports not received: Conventions Nos. 11, 12, 17, 18, 19, 97, 105, 122, 124, 131, 135, 141, 151, 154, 173, 176	
<b>Zimbabwe</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 26, 87, 98, 99, 140, 159	

### Grand Total

A total of 2,207 reports (article 22) were requested, of which 1,497 reports (67.83 per cent) were received.

A total of 186 reports (article 35) were requested, of which 167 reports (89.78 per cent) were received.

**Appendix II. Statistical table of reports received on  
ratified Conventions as of 7 December 2012**  
(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 of Experts		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%



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 of Experts	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%	2122 77.3%
2011	2735	960 35.1%	1855 67.8%	2117 77.4%
2012	2207	809 36.7%	1497 67.8%	
<b>As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals</b>				
2012	2207	809 36.7%	1497 67.8%	

### **Appendix III. List of observations made by employers' and workers' organizations**

<b>Albania</b> <hr/>	<ul style="list-style-type: none"> <li>• International Organisation of Employers (IOE)</li> </ul>	<p>on Convention No. 87</p>
<b>Algeria</b> <hr/>	<ul style="list-style-type: none"> <li>• International Organisation of Employers (IOE)</li> <li>• International Trade Union Confederation (ITUC)</li> <li>• National Autonomous Union of Public Administration Personnel (SNAPAP)</li> <li>• National Autonomous Union of Public Administration Personnel (SNAPAP); Autonomous National Union of Secondary and Technical Teachers (SNAPEST); Education International (EI)</li> </ul>	<p>on Conventions Nos 87 87 87, 98 87</p>
<b>Antigua and Barbuda</b> <hr/>	<ul style="list-style-type: none"> <li>• International Organisation of Employers (IOE)</li> </ul>	<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 Organisation of Employers (IOE)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<p>on Conventions Nos 17, 42, 81, 87, 100, 111, 129, 169 12, 17, 19, 42, 81, 87, 100, 111, 129 169 87</p>
<b>Armenia</b> <hr/>	<ul style="list-style-type: none"> <li>• Confederation of Trade Unions of Armenia (CTUA)</li> <li>• Republican Union of Employers of Armenia (RUEA)</li> <li>• Union of Manufacturers and Entrepreneurs of Armenia (UMEA)</li> </ul>	<p>on Conventions Nos 17, 18, 29, 81, 97, 98, 111 17, 18, 81, 97, 98, 111 29, 81</p>
<b>Australia</b> <hr/>	<ul style="list-style-type: none"> <li>• Australian Council of Trade Unions (ACTU)</li> <li>• International Organisation of Employers (IOE)</li> </ul>	<p>on Conventions Nos 19, 42, 81, 100, 111, 137, 155 87</p>
<b>Austria</b> <hr/>	<ul style="list-style-type: none"> <li>• Federal Chamber of Labour (BAK)</li> </ul>	<p>on Conventions Nos 27, 81, 100, 102, 111</p>
<b>Azerbaijan</b> <hr/>	<ul style="list-style-type: none"> <li>• International Organisation of Employers (IOE)</li> </ul>	<p>on Convention No. 87</p>
<b>Bahamas</b> <hr/>	<ul style="list-style-type: none"> <li>• International Organisation of Employers (IOE)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<p>on Conventions Nos 87 87, 98</p>
<b>Bangladesh</b> <hr/>	<ul style="list-style-type: none"> <li>• Bangladesh Employers' Federation (BEF)</li> <li>• International Organisation of Employers (IOE)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<p>on Conventions Nos 18, 19, 27, 32, 81, 100, 111 87 87</p>
<b>Barbados</b> <hr/>	<ul style="list-style-type: none"> <li>• International Organisation of Employers (IOE)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<p>on Conventions Nos 87 87, 98</p>
<b>Belarus</b> <hr/>	<ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<p>on Convention No. 87</p>
<b>Belgium</b> <hr/>	<ul style="list-style-type: none"> <li>• Confederation of Christian Trade Unions (CSC)</li> </ul>	<p>on Convention No. 81</p>

**Benin**

- International Organisation of Employers (IOE)

on Convention No.

87

**Bolivia, Plurinational State of**

- International Organisation of Employers (IOE)

on Conventions Nos

87, 169

**Botswana**

- International Trade Union Confederation (ITUC)

on Conventions Nos

98, 151

**Brazil**

- International Organisation of Employers (IOE)

on Convention No.

169

**Bulgaria**

- Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos

6, 26, 77, 78, 79, 124, 156, 173

87

87, 98

**Burkina Faso**

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos

87

87, 98

**Burundi**

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- Trade Union Confederation of Burundi (COSYBU)

on Conventions Nos

87

87, 98

12, 17, 26, 29, 42, 52, 62, 64, 81, 87,

100, 111, 135, 138, 144

**Cambodia**

- Cambodia Independent Teachers' Association (CITA); Education International (EI)
- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

87

**Cameroon**

- General Union of Workers of Cameroon (UGTC)

on Conventions Nos

19, 81, 87, 97, 100, 111

**Canada**

- Canadian Labour Congress (CLC)
- Confederation of National Trade Unions (CSN)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos

87

87

87

87

**Central African Republic**

- International Organisation of Employers (IOE)

on Convention No.

87

**Chad**

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos

87

87, 98

**Chile**

- International Organisation of Employers (IOE)
- Trade Unions Federation of CODELCO Chile Supervisors and Professionals (FESUC)

on Conventions Nos

87, 169

87, 98, 100, 111, 161

**China - Hong Kong Special Administrative Region**

- Hong Kong Confederation of Trade Unions (HKCTU); Hong Kong Federation of Asian Domestic Workers Union (FADWU)

on Convention No.

97

## Colombia

- Association of Officials of the Medellín Municipality (ADEM); Confederation of Workers of Colombia (CTC)
- Confederation of Workers of Colombia (CTC)
- General Confederation of Labour (CGT)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- National Employers Association of Colombia (ANDI); International Organisation of Employers (IOE)
- Single Confederation of Workers (CUT)
- Single Workers' Union of Materials for the Construction Industry (SUTIMAC)
- World Federation of Trade Unions (WFTU)

### on Conventions Nos

100, 111  
81, 87, 98, 144, 151, 154, 162  
12, 17, 18, 19, 87, 100, 111  
87, 169  
87  
12, 17, 18, 19, 81, 87, 98, 100, 144, 169  
12, 17, 18, 19, 24, 81, 87, 100, 111, 129, 144, 169  
162  
87, 98, 154

## Costa Rica

- Confederation of Workers Rerum Novarum (CTRN)
- Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- National Chamber of Transportation (CNT)
- National Federation of Employees of the Social Security System and Fund (UNDECA); World Federation of Trade Unions (WFTU)

### on Conventions Nos

1, 81, 98, 100, 102, 111, 129  
81, 87, 98  
87, 169  
98  
1  
98, 135

## Croatia

- International Trade Union Confederation (ITUC)

### on Convention No.

87

## Cuba

- Coalition of Independent Trade Unions of Cuba (CSIC)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

81, 111  
87  
87

## Czech Republic

- Confederation of Industry and Transport (SP ČR)
- Czech-Moravian Confederation of Trade Unions (CM KOS)

### on Conventions Nos

100, 111  
100, 111

## Democratic Republic of the Congo

- International Trade Union Confederation (ITUC)

### on Convention No.

29

## Denmark (Greenland)

- Health Workers Union in Greenland
- Teachers Trade Union of Greenland (IMAK)

### on Conventions Nos

87  
5, 6, 11, 19, 87

## Djibouti

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Dominica

- International Organisation of Employers (IOE)

### on Convention No.

87

## Dominican Republic

- International Trade Union Confederation (ITUC)
- National Confederation of Dominican Workers (CNTD); National Confederation of Trade Union Unity (CNUS); Autonomous Confederation of Workers' Unions (CASC)

### on Conventions Nos

98  
19, 26, 29, 81, 95, 98, 100, 111, 144

## Ecuador

- Ecuadorian Medical Federation (FME)
- International Organisation of Employers (IOE)

### on Conventions Nos

87, 98, 149  
87, 169

## Egypt

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- Egyptian Trade Union Federation (ETUF)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87  
87  
87

## El Salvador

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- National Business Association (ANEP); International Organisation of Employers (IOE)

on Conventions Nos  
87, 98, 142, 144

## Equatorial Guinea

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- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87  
87, 98

## Eritrea

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Estonia

---

- International Organisation of Employers (IOE)

on Convention No.  
87

## Ethiopia

---

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- National Teachers' Association (NTA)

on Conventions Nos  
87  
87  
87, 98

## Fiji

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- Fiji Mine Workers Union (FMWU)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
98  
87  
87, 98

## Finland

---

- Central Organization of Finnish Trade Unions (SAK)
- Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA)
- Finnish Confederation of Professionals (STTK)

on Conventions Nos  
81, 121, 128, 137  
121  
121

## France

---

- General Confederation of Labour (CGT)

on Convention No.  
97

## Georgia

---

- Educators and Scientists Free Trade Union of Georgia (ESFTUG); Education International (EI)
- Georgian Trade Union Confederation (GTUC)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98  
29, 52, 87, 98, 105, 138, 182  
87  
98

## Germany

---

- German Confederation of Trade Unions (DGB)
- International Organisation of Employers (IOE)

on Conventions Nos  
26, 29, 87, 98, 105, 129, 138, 167, 187  
87

## Ghana

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Greece

---

- Greek General Confederation of Labour (GSEE)
- Hellenic Federation of Enterprises and Industries (SEV)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- World Federation of Trade Unions (WFTU)

on Conventions Nos  
87, 98, 154  
87, 98, 135, 154  
87  
87, 98  
87, 98, 154

## Guatemala

---

- Central Confederation of Rural and Urban Workers (CCTCC) on Conventions Nos  
169
- Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF); International Organisation of Employers (IOE) 87, 98, 169
- General Confederation of Workers of Guatemala (CGTG); Trade Unions' Unity of Guatemala (CUSG); Trade Union Confederation of Guatemala (UNSITRAGUA) 87, 98, 144, 169
- Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG) 29, 30, 87, 95, 105, 144
- International Organisation of Employers (IOE) 87, 169
- International Trade Union Confederation (ITUC) 87
- Trade Union of Workers of Operators of Plants, Wells and Guards of the Municipal Water Company (SITOPGEMA) 1, 29

## Guinea

---

- International Trade Union Confederation (ITUC) on Conventions Nos  
87, 98

## Guinea - Bissau

---

- Chamber of Commerce, Industry, Agriculture and Services (CCIAS) on Conventions Nos  
138, 182
- General Confederation of Independent Trade Unions - Guinea-Bissau (CGSI-GB) 138, 182
- National Union of Workers of Guinea (UNTG) 138, 182

## Guyana

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- International Organisation of Employers (IOE) on Convention No.  
87

## Haiti

---

- International Trade Union Confederation (ITUC) on Conventions Nos  
87, 98

## Honduras

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- International Organisation of Employers (IOE) on Conventions Nos  
87, 169
- International Trade Union Confederation (ITUC) 87, 98

## Hungary

---

- International Trade Union Confederation (ITUC) on Conventions Nos  
87, 98

## India

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- Trade Union Co-Ordination Centre on Convention No.  
118

## Indonesia

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- International Organisation of Employers (IOE) on Conventions Nos  
87
- International Trade Union Confederation (ITUC) 87

## Iraq

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- International Trade Union Confederation (ITUC) on Conventions Nos  
98

## Italy

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- Italian Confederation of Workers' Trade Unions (CISL); Italian General Confederation of Labour (CGIL); Italian Union of Labour (UIL) on Conventions Nos  
143
- Italian General Confederation of Labour (CGIL) 138

## Jamaica

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- International Organisation of Employers (IOE) on Convention No.  
87

## Japan

---

- All-Japan Shipbuilding and Engineering Union (AJSEU) 29
- Federation of Korean Trade Unions (FKTU); Korean Confederation of Trade Unions (KCTU) 29
- International Organisation of Employers (IOE) 87
- Japan Postal Industry Workers' Union (YUSANRO) 122
- Japanese Trade Union Confederation (JTUC-RENGO) 19, 27, 29, 102, 121, 131, 181
- Labor Union of Migrant Workers 29
- Liaison Council of Labor Unions in Public Corporations (TOKUSHUHOJIN-ROREN) 122
- National Confederation of Trade Unions (ZENROREN) 29, 144

## Kazakhstan

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- International Organisation of Employers (IOE) 87

## Kiribati

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- International Organisation of Employers (IOE) 87

## Korea, Republic of

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- Federation of Korean Trade Unions (FKTU) 111, 144
- Federation of Korean Trade Unions (FKTU); Korean Confederation of Trade Unions (KCTU) 131
- Korea Employers' Federation (KEF) 111
- Korea Employers' Federation (KEF); International Organisation of Employers (IOE) 111
- Korean Confederation of Trade Unions (KCTU) 19, 111
- Korean Teachers and Education Workers' Union (KTU); Education International (EI) 111

## Liberia

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- International Organisation of Employers (IOE) 87
- International Trade Union Confederation (ITUC) 87, 98

## Luxembourg

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- Confederation of Christian Trade Unions of Luxembourg (LCGB) 87, 98
- Trade Union Organization of Luxembourg (OGB-L) 96

## Madagascar

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- General Confederation of Workers' Unions of Madagascar (CGSTM) 6, 19, 26, 29, 97, 124, 138, 144, 182
- International Trade Union Confederation (ITUC); and other national trade unions 122

## Malawi

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- International Trade Union Confederation (ITUC) 87, 98

## Mali

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- Confederation of Workers' Union of Mali (CSTM) 87, 98

## Mauritania

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- Association of Pensioners of the National Social Security Fund 102
- Free Confederation of Mauritanian Workers (CLTM) 29, 87, 98
- General Confederation of Workers of Mauritania (CGTM) 81, 112, 122
- International Trade Union Confederation (ITUC) 29

## Mexico

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- International Organisation of Employers (IOE) 169
- National Union of Workers (UNT) 102, 144, 155
- Single Union of Government Workers of the Federal District (SUTGDF) 102, 144

**Morocco**

- Democratic Labour Organization (ODT)

**on Convention No.**

98

**Mozambique**

- National Confederation of Independent and Free Trade Unions of Mozambique (CONSILMO)
- Workers' Organization of Mozambique (OTM)

**on Conventions Nos**

29, 105, 138, 144, 182

29, 105, 138, 144, 182

**Myanmar**

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

**on Conventions Nos**

87

29, 87

**Nepal**

- International Trade Union Confederation (ITUC)

**on Convention No.**

29

**Netherlands**

- Confederation of Netherlands Industry and Employers (VNO-NCW)
- Confederation of Netherlands Industry and Employers (VNO-NCW); International Organisation of Employers (IOE)
- Netherlands Trade Union Confederation (FNV)
- Netherlands Trade Union Confederation (FNV); Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP); National Federation of Christian Trade Unions (CNV)
- Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP)

**on Conventions Nos**

94, 131, 159

131, 159

29, 94, 97, 105, 131, 159

121

159

**Netherlands (Aruba)**

- International Organisation of Employers (IOE)

**on Convention No.**

87

**New Zealand**

- Business New Zealand
- New Zealand Council of Trade Unions (NZCTU)

**on Conventions Nos**

10, 26, 29, 32, 59, 97, 99, 105, 144, 182

10, 29, 32, 59, 97

**Nicaragua**

- International Organisation of Employers (IOE)

**on Convention No.**

169

**Nigeria**

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- Nigeria Union of Teachers (NUT); Education International (EI)

**on Conventions Nos**

87

87, 98

87, 98

**Norway**

- Confederation of Norwegian Business and Industry (NHO)
- Confederation of Norwegian Business and Industry (NHO); Enterprise Federation of Norway (VIRKE)
- Norwegian Confederation of Trade Unions (LO)

**on Conventions Nos**

129

94

94, 95, 137, 144, 182

**Pakistan**

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- Pakistan Workers' Federation (PWF)

**on Conventions Nos**

87

87, 98

11, 18, 81, 87, 98

**Panama**

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- National Federation of Public Employees and Public Service Enterprise Workers (FENASEP)

**on Conventions Nos**

87

87, 98

26, 81, 87



## Paraguay

---

- Central Confederation of Workers - Authentic (CUT-A)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
169  
169  
87, 98

## Peru

---

- Autonomous Workers' Confederation of Peru (CATP)
- General Confederation of Workers of Peru (CGTP)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- Single Confederation of Workers of Peru (CUT)

on Conventions Nos  
59, 71, 87, 98, 122  
26, 87, 98, 169  
169  
87, 98  
12, 19, 24, 25, 35, 36, 37, 38, 39, 40,  
44, 102

## Philippines

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Poland

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- Independent and Self-Governing Trade Union "Solidarnosc"
- International Trade Union Confederation (ITUC)
- Polish Confederation of Private Employers Lewiatan (PKPP)

on Conventions Nos  
81, 87, 98, 122  
87, 98  
87, 98

## Portugal

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- General Confederation of Portuguese Workers (CGTP)
- General Workers' Union (UGT)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
6, 77, 78, 95, 97, 98, 122, 124, 131,  
143  
6, 27, 77, 78, 87, 95, 97, 98, 122, 131,  
137, 143  
87, 98

## Romania

---

- Federation of Free Trade Unions of the Chemical and Petrochemical Industries (FSLCP)
- International Trade Union Confederation (ITUC)
- National Trade Union Confederation (CNS 'CARTEL ALFA')

on Conventions Nos  
95, 98  
87, 98  
1, 87

## Russian Federation

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Rwanda

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Sao Tome and Principe

---

- International Organisation of Employers (IOE)

on Convention No.  
87

## Senegal

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98, 182

## Serbia

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- Confederation of Autonomous Trade Unions of Serbia (CATUS)
- International Trade Union Confederation (ITUC)
- Trade Union Confederation 'Nezavisnost'
- Union of Employers of Serbia

on Conventions Nos  
87, 122, 131, 144  
87, 98  
87, 97, 98, 122, 131, 144  
87, 98

## Singapore

---

- International Trade Union Confederation (ITUC)

on Convention No.  
98

## Slovenia

---

- Chamber of Agriculture and Forestry of Slovenia
- Employers' Association of Slovenia (ZDS)

on Conventions Nos  
12, 24  
87, 122, 131

## South Africa

---

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Spain

---

- General Union of Workers (UGT)
- International Trade Union Confederation (ITUC)
- Trade Union Confederation of Workers' Commissions (CC.OO.)

### on Conventions Nos

87, 88, 97, 98, 122, 131, 154, 158, 173  
87, 98  
77, 78, 79, 87, 88, 90, 94, 95, 122,  
123, 124, 131, 158, 173

## Sri Lanka

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- All Ceylon Union of Teachers (ACUT); Education International (EI)
- International Trade Union Confederation (ITUC)
- Lanka Jathika Estate Workers' Union (LJEWU)

### on Conventions Nos

100  
87, 98  
11, 18, 29, 81, 87, 95, 98, 103, 105,  
131, 138, 144, 182

## Sudan

---

- International Trade Union Confederation (ITUC)

### on Convention No.

98

## Swaziland

---

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- Trade Union Congress of Swaziland (TUCOSWA)

### on Conventions Nos

87  
87, 98  
87

## Sweden

---

- Confederation of Swedish Enterprise (CSE)
- International Trade Union Confederation (ITUC)
- Swedish Confederation for Professional Employees (TCO); Swedish Trade Union Confederation (LO)

### on Conventions Nos

87, 98, 151, 154  
87, 98  
87, 98

## Switzerland

---

- Geneva Trade Union Action Group (CGAS)
- International Trade Union Confederation (ITUC)
- Swiss Federation of Trade Unions (USS/SGB)
- Union of Swiss Employers (UPS)

### on Conventions Nos

87  
87, 98  
87, 98  
87, 98

## Syrian Arab Republic

---

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Tanzania, United Republic of

---

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Thailand

---

- State Enterprises Workers Relations Confederation (SERC)

### on Convention No.

19

## The former Yugoslav Republic of Macedonia

---

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Timor-Leste

---

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Togo

---

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Trinidad and Tobago

---

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Tunisia

---

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

87  
87, 98

## Turkey

---

- Confederation of Turkish Trade Unions (TÜRK-İS)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)
- Turkish Confederation of Employers' Associations (TİSK)
- Turkish Union of Public Employees in the Education, Training and Science Services (TÜRK EĞİTİM-SEN); Education International (EI)

### on Conventions Nos

11, 29, 42, 81, 87, 105, 118, 138, 158, 182  
87  
87, 98  
11, 29, 42, 87, 105, 118, 138, 158, 182  
87, 98

## Uganda

---

- International Trade Union Confederation (ITUC)
- National Organisation of Trade Unions (NOTU)

### on Conventions Nos

87, 98  
12, 19, 45, 81, 87, 98, 100, 111, 123, 124, 143, 144, 154, 182

## Ukraine

---

- Confederation of Free Trade Unions of Ukraine (KVPU)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

29, 47, 87, 95, 98, 122, 158  
87, 98

## United Kingdom

---

- International Trade Union Confederation (ITUC)
- Trades Union Congress (TUC)

### on Conventions Nos

87, 98  
87, 97, 98, 122

## Uruguay

---

- International Trade Union Confederation (ITUC)
- National Chamber of Commerce and Services of Uruguay (CNCS); Chamber of Industries of Uruguay (CIU); International Organisation of Employers (IOE)

### on Conventions Nos

87, 98  
98, 144

## Uzbekistan

---

- Chamber of Commerce of Uzbekistan
- Council of the Federation of Trade Unions
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

182  
182  
29, 105, 182  
182

## Venezuela, Bolivarian Republic of

---

- Confederation of Workers of Venezuela (CTV)
- Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS); International Organisation of Employers (IOE)
- Independent Trade Union Alliance (ASI)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

81, 87, 98, 144  
26, 87, 144  
6, 26, 87, 95, 98, 122, 155  
169  
87, 98

## Yemen

---

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

87  
87, 98

## Zambia

---

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

87  
87, 98

## Zimbabwe

---

- International Trade Union Confederation (ITUC)
- Zimbabwe Congress of Trade Unions (ZCTU)

### on Conventions Nos

87, 98  
87, 98, 182

**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 any 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 HIV and AIDS Recommendation, 2010 (No. 200), adopted by the Conference at its 99th Session, and of the Domestic Workers Convention, 2011 (No. 189), and its corresponding Recommendation (No. 201), adopted by the Conference at its 100th Session. Some governments have also provided information on the submission of the Social Protection Floors Recommendation, 2012 (No. 202), adopted by the Conference at its 101st Session (June 2012). In addition, the present summary contains information supplied by governments with respect to earlier adopted instruments submitted to the competent authorities in 2012.

The summarized information also consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 101st Session of the Conference (Geneva, June 2012) and which could not therefore be laid before the Conference at that session.

In the next report, the Appendix IV summary will contain information showing how far governments have progressed in the submission to the competent authorities of the Social Protection Floors Recommendation, 2012 (No. 202), adopted by the Conference at its 101st Session (June 2012).

**Algeria.** The instruments adopted by the Conference at its 100th Session were submitted to the National People's Assembly on 4 December 2011.

**Antigua and Barbuda.** The instruments adopted by the Conference at its 100th Session were submitted to a competent authority on 11 July 2012.

**Armenia.** The instruments adopted by the Conference at its 100th and 101st Sessions were submitted to the National Assembly on 26 December 2011 and 8 August 2012, respectively.

**Australia.** The instruments adopted by the Conference at its 100th Session were submitted to the House of Representatives and the Senate on 9 May 2012.

**Barbados.** The instruments adopted by the Conference at its 100th Session were submitted to Parliament on 10 October 2012.

**Belarus.** Recommendation No. 200 was submitted to the National Assembly on 15 December 2011.

**Benin.** Recommendation No. 200 was submitted to the National Assembly on 13 June 2012.

**Bosnia and Herzegovina.** Recommendation No. 200 was submitted to the Parliamentary Assembly of Bosnia and Herzegovina.

**Plurinational State of Bolivia.** The Chamber of Deputies of the Plurinational Legislative Assembly approved the ratification of Convention No. 189 on 21 August 2012.

**Cape Verde.** The instruments adopted at the sessions of the Conference held between 1995 and 2010 were submitted to the National Assembly on 18 August 2011. The instruments adopted at the 100th Session of the Conference were submitted to the National Assembly on 21 May 2012.

**China.** The instruments adopted at the 99th and 100th Sessions of the Conference were submitted to the State Council and the Standing Committee of the 11th National People's Congress on 8 July 2012.

**Colombia.** Convention No. 189 was submitted to the Congress of the Republic for its ratification on 4 April 2012. Recommendation No. 200 was submitted to the Congress of the Republic on 26 October 2012.

**Costa Rica.** The instruments adopted by the Conference at its 100th Session were submitted to the Legislative Assembly on 5 December 2011.

**Cyprus.** The instruments adopted at the 91st, 95th, 96th, 99th and 100th Sessions were submitted to the House of Representatives in March, April and June 2012.

**Czech Republic.** The instruments adopted at the 100th Session of the Conference were submitted to the Chamber of Deputies and the Senate on 9 May 2012.

**Ecuador.** The instruments adopted by the Conference at its 100th Session were submitted to the National Assembly on 13 October 2011.

**Egypt.** The instruments adopted by the Conference at its 99th and 100th Sessions were submitted to the People's Assembly on 23 January 2012.

**Ethiopia.** The instruments adopted at the 99th, 100th and 101st Sessions of the Conference were submitted to the House of People's Representatives in March and September 2012.

**Finland.** Recommendation No. 200 was submitted to Parliament on 11 February 2011.

**Georgia.** The instruments adopted by the Conference at its 100th Session were submitted to the Parliament of Georgia on 2 September 2011.

**Germany.** The instruments adopted by the Conference at its 99th and 100th Sessions were submitted to the *Bundestag* and the *Bundesrat* on 8 December 2011 and 31 January 2012, respectively.

**Ghana.** The instruments adopted by the Conference at its 99th and 100th Sessions were submitted to the Fourth Republican Parliament on 4 June 2012. Recommendation No. 202 was submitted to Parliament on 3 October 2012.

**Greece.** Recommendation No. 200 was submitted to the Hellenic Parliament on 3 November 2011.

**India.** Recommendation No. 200 was submitted in the *Rajya Sabha* on 1 December 2010 and in the *Lok Sabha* on 6 December 2010. The instruments adopted by the Conference at its 100th Session were submitted in the *Rajya Sabha* on 30 November 2011 and in the *Lok Sabha* on 12 December 2011.

**Indonesia.** The instruments adopted by the Conference at its 100th Session were submitted to the House of Representatives on 31 May 2012.

**Ireland.** The instruments adopted by the Conference at its 100th Session were submitted to the Irish Parliament Committee on Jobs, Enterprise and Innovation on 14 June 2012.

**Israel.** The instruments adopted by the Conference at its 100th Session were submitted to the Knesset on 30 October 2011.

**Italy.** The instruments adopted by the Conference at its 100th and 101st Sessions were submitted to the Chamber of Deputies and the Senate on 21 February and 29 October 2012.

**Japan.** The instruments adopted by the Conference at its 100th Session were submitted to the Diet on 12 June 2012.

**Kenya.** The instruments adopted at the 99th, 100th and 101st Sessions of the Conference were submitted to the National Assembly on 3 August 2012.

**Republic of Korea.** The instruments adopted by the Conference at its 100th Session were submitted to the National Assembly on 9 May 2012.

**Lao People's Democratic Republic.** The instruments adopted by the Conference at its 100th Session were submitted to the National Assembly on 20 March 2011.

**Lithuania.** Recommendation No. 200 was submitted to the Seimas.

**Mauritius.** The instruments adopted by the Conference at its 99th and 100th Sessions were submitted to the National Assembly on 21 June 2011 and 1 June 2012, respectively. The ratification of Convention No. 189 was registered on 13 September 2012.

**Mongolia.** The instruments adopted by the Conference at its 100th Session were submitted to the State Great Hural on 20 June 2012.

**Morocco.** The instruments adopted by the Conference at its 100th Session were submitted to the House of Representatives and the House of Councillors on 29 November 2011.

**New Zealand.** The instruments adopted by the Conference at its 100th Session were submitted to the House of Representatives on 23 May 2012.

**Nicaragua.** Recommendation No. 200 was submitted to the National Assembly on 6 March 2012.

**Oman.** Recommendation No. 200 was submitted to the Council of Ministers and to the Consultative Council (*Majlis Al-Shoura*).

**Paraguay.** Convention No. 189 was submitted to the Congress of the Republic for its ratification on 3 October 2012.

**Philippines.** The instruments adopted at the 99th, 100th and 101st Sessions were submitted to the Senate and the House of Representatives on 7 February and 30 September 2011 and 4 September 2012. The ratification of Convention No. 189 was registered on 5 September 2012.

**Poland.** The instruments adopted by the Conference at its 100th Session were submitted to the *Sejm* on 23 January 2012.

**Romania.** The instruments adopted by the Conference at its 100th Session were submitted to the Chamber of Deputies on 22 October 2011.

**Saudi Arabia.** Recommendation No. 200 was submitted to the Council of Ministers and the Consultative Council on 19 December 2011.

**Serbia.** The instruments adopted by the Conference at its 100th and 101st Sessions were submitted to the National Assembly on 29 June 2011 and 18 July 2012, respectively.

**Singapore.** The instruments adopted by the Conference at its 99th and 100th Sessions were submitted to Parliament on 24 May 2012.

**Slovakia.** The instruments adopted by the Conference at its 100th Session were submitted to the National Council on 7 December 2011.

**Spain.** Recommendation No. 200 was submitted to the *Cortes Generales* on 29 July 2011.

**Sweden.** Recommendation No. 200 was submitted to Parliament on 29 September 2011.

**Switzerland.** Recommendation No. 200 was submitted to the Swiss Parliament on 21 March 2012.

**United Republic of Tanzania.** The instruments adopted by the Conference at its 99th, 100th and 101st Sessions were submitted to Parliament on 8 July 2012.

**Trinidad and Tobago.** Recommendation No. 200 was submitted to the House of Representatives and the Senate of the Parliament of Trinidad and Tobago on 2 and 6 March 2012, respectively.

**Tunisia.** The instruments adopted by the Conference at its 99th and 100th Sessions were submitted to the Constitutional National Assembly on 6 and 19 April 2012.

**Turkey.** The instruments adopted by the Conference at its 100th Session were submitted to the Grand National Assembly on 14 December 2011.

**Turkmenistan.** The instruments adopted by the Conference between 1994 and 2011 were submitted to the Mejlis (Parliament) on 25 May 2012.

**United Kingdom.** The instruments adopted by the Conference at its 100th Session were submitted to Parliament in April 2012.

**United States.** The instruments adopted by the Conference at its 99th and 100th Sessions were submitted to the Senate and the House of Representatives on 29 March and 3 August 2012, respectively.

**Uruguay.** The ratification of Convention No. 189 was registered on 14 June 2012.

**Uzbekistan.** The instruments adopted by the Conference between 1993 and 2011 were submitted to the *Oliy Majlis* (Parliament) on 3 April 2012. Recommendation No. 202 was submitted to the *Oliy Majlis* on 13 September 2012.

**Bolivarian Republic of Venezuela.** Recommendation No. 202 was submitted to the National Assembly on 28 August 2012.

**Zimbabwe.** The instruments adopted by the Conference at its 99th and 101st Sessions were submitted to Parliament on 16 April and 12 September 2012, respectively.

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 concerning the obligation to submit Conventions and Recommendations to the competent authorities, 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 100th Sessions of the International Labour Conference, 1948-2011)

*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 2005), 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, 99, 100
<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, 94-96, 99, 100
<b>Algeria</b>	47-56, 58-72, 74-92, 94-96, 100	99
<b>Angola</b>	61-72, 74-78, 79 (C173), 80, 81, 82 (R183, C176), 83-85, 87-90	79 (R180), 82 (P081), 86, 91, 92, 94-96, 99, 100
<b>Antigua and Barbuda</b>	68-72, 74-82, 84, 87, 94, 100	83, 85, 86, 88-92, 95, 96, 99
<b>Argentina</b>	31-56, 58-72, 74-90, 92, 94, 96	91, 95, 99, 100
<b>Armenia</b>	80-92, 94-96, 99, 100	
<b>Australia</b>	31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Austria</b>	31-56, 58-72, 74-92, 94-96	99, 100

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>Azerbaijan</b>	
79 (C173) , 80-82, 85-88, 91, 92	79 (R180) , 83, 84, 89, 90, 94-96, 99, 100
<b>Bahamas</b>	
61-72, 74-84, 87, 91, 94	85, 86, 88-90, 92, 95, 96, 99, 100
<b>Bahrain</b>	
63-72, 74-87	88-92, 94-96, 99, 100
<b>Bangladesh</b>	
58-72, 74-76, 77 (C171, R178) , 78, 80, 84 (C178, C180, P147) , 85 (C181) , 87	77 (C170, P089, R177) , 79, 81-83, 84 (C179, R185, R186, R187) , 85 (R188) , 86, 88-92, 94-96, 99, 100
<b>Barbados</b>	
51-56, 58-72, 74-92, 94-96, 99	100
<b>Belarus</b>	
37-56, 58-72, 74-92, 94-96, 99	100
<b>Belgium</b>	
31-56, 58-72, 74-92, 94, 95 (C187, R197) , 99	95 (R198) , 96, 100
<b>Belize</b>	
68-72, 74-76, 84 (P147) , 87, 88	77-83, 84 (C178, C179, C180, R185, R186, R187) , 85, 86, 89-92, 94-96, 99, 100
<b>Benin</b>	
45-56, 58-72, 74-92, 94-96, 99	100
<b>Bolivia, Plurinational State of</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, 100	80 (R181) , 81 (R182) , 82 (P081, R183) , 83 (R184) , 84 (P147, R185, R186, R187) , 85 (R188) , 86, 88 (R191) , 89 (R192) , 90, 92, 94-96, 99
<b>Bosnia and Herzegovina</b>	
80, 81, 82 (C176, R183) , 83-89, 90 (R193, R194) , 91, 92, 94-96	82 (P081) , 90 (P155) , 99, 100
<b>Botswana</b>	
64-72, 74-89, 90 (R193, R194) , 94, 95	90 (P155) , 91, 92, 96, 99, 100



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>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, 94-96, 99, 100
<b>Brunei Darussalam</b>	
-	96, 99, 100
<b>Bulgaria</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>Burkina Faso</b>	
45-56, 58-72, 74-92, 94-96	99, 100
<b>Burundi</b>	
47-56, 58-72, 74-92, 95	94, 96, 99, 100
<b>Cambodia</b>	
53-56, 58-72, 74-92, 94-96	99, 100
<b>Cameroon</b>	
44-56, 58-72, 74-92, 94-96	99, 100
<b>Canada</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>Cape Verde</b>	
65-72, 74-92, 94-96, 99, 100	
<b>Central African Republic</b>	
45-56, 58-72, 74-92, 94-96	99, 100
<b>Chad</b>	
45-56, 58-72, 74-92, 94-96	99, 100
<b>Chile</b>	
31-56, 58-72, 74-82, 87, 95 (C187, R197)	83-86, 88-92, 94, 95 (R198) , 96, 99, 100
<b>China</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	

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>Colombia</b>	
31-56, 58-72, 74-81, 82 (C176, P081) , 83-89, 90 (R193, R194) , 91, 92, 94-96, 99, 100	82 (R183) , 90 (P155)
<b>Comoros</b>	
65-72, 74-78, 87	79-86, 88-92, 94-96, 99, 100
<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) , 77-86, 88-92, 94-96, 99, 100
<b>Costa Rica</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Côte d'Ivoire</b>	
45-56, 58-72, 74-82, 87	83-86, 88-92, 94-96, 99, 100
<b>Croatia</b>	
80-85, 87, 91, 94	86, 88-90, 92, 95, 96, 99, 100
<b>Cuba</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>Cyprus</b>	
45-56, 58-72, 74-92, 94-96, 99, 100	
<b>Czech Republic</b>	
80-92, 94-96, 99, 100	
<b>Democratic Republic of the Congo</b>	
45-56, 58-72, 74-82, 87	83-86, 88-92, 94-96, 99, 100
<b>Denmark</b>	
31-56, 58-72, 74-92, 94-96, 99	100
<b>Djibouti</b>	
64, 65, 67, 71, 72, 83, 87	66, 68-70, 74-82, 84-86, 88-92, 94-96, 99, 100
<b>Dominica</b>	
68-72, 74-79, 87	80-86, 88-92, 94-96, 99, 100

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, 99	96, 100
<b>Ecuador</b>	
31-56, 58-72, 74-88, 90 (P155) , 91, 92, 94, 95, 100	89, 90 (R193, R194) , 96, 99
<b>Egypt</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>El Salvador</b>	
31-56, 58-61, 63 (C149) , 64, 67 (R164, R165, C155, C156) , 69 (R168, C159) , 71, 72, 74-81, 87, 90 (P155)	62, 63 (R156, R157, C148) , 65, 66, 67 (R163, C154) , 68, 69 (R167) , 70, 82-86, 88, 89, 90 (R193, R194) , 91, 92, 94-96, 99, 100
<b>Equatorial Guinea</b>	
67-72, 74-79, 84, 87	80-83, 85, 86, 88-92, 94-96, 99, 100
<b>Eritrea</b>	
80-92, 94, 95	96, 99, 100
<b>Estonia</b>	
79-92, 94-96, 99, 100	
<b>Ethiopia</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Fiji</b>	
59-72, 74-82, 84 (C178, R185) , 87, 89	83, 84 (C179, C180, P147, R186, R187) , 85, 86, 88, 90-92, 94-96, 99, 100
<b>Finland</b>	
31-56, 58-72, 74-92, 94-96, 99	100
<b>France</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Gabon</b>	
45-56, 58-72, 74-81, 82 (C176) , 83 (C177) , 84, 85 (C181) , 87, 89 (C184) , 91, 94	82 (P081, R183) , 83 (R184) , 85 (R188) , 86, 88, 89 (R192) , 90, 92, 95, 96, 99, 100
<b>Gambia</b>	
82-92, 94-96	99, 100
<b>Georgia</b>	
85-87, 100	80-84, 88-92, 94-96, 99

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>Germany</b>	
34-56, 58-72, 74-76, 77 (C170, R177) , 78-92, 94-96, 99, 100	77 (C171, P089, R178)
<b>Ghana</b>	
40-56, 58-72, 74-92, 94-96, 99, 100	
<b>Greece</b>	
31-56, 58-72, 74-92, 94-96, 99	100
<b>Grenada</b>	
66-72, 74-92, 94, 95	96, 99, 100
<b>Guatemala</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>Guinea</b>	
43-56, 58-72, 74-83, 87	84-86, 88-92, 94-96, 99, 100
<b>Guinea-Bissau</b>	
63-72, 74-88, 94	89-92, 95, 96, 99, 100
<b>Guyana</b>	
50-56, 58-72, 74-92, 94, 95	96, 99, 100
<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) , 76-86, 88-92, 94-96, 99, 100
<b>Honduras</b>	
38-56, 58-72, 74-92	94-96, 99, 100
<b>Hungary</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>Iceland</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>India</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Indonesia</b>	
33-56, 58-72, 74-92, 94-96, 99	100

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>Iran, Islamic Republic of</b>	
31-56, 58-72, 74-89, 90 (R193, R194) , 91, 92, 94-96	90 (P155) , 99, 100
<b>Iraq</b>	
31-56, 58-72, 74-87, 89	88, 90-92, 94-96, 99, 100
<b>Ireland</b>	
31-56, 58-72, 74-87, 100	88-92, 94-96, 99
<b>Israel</b>	
32-56, 58-72, 74-92, 94-96, 99, 100	
<b>Italy</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Jamaica</b>	
47-56, 58-72, 74-91	92, 94-96, 99, 100
<b>Japan</b>	
35-56, 58-72, 74-92, 94-96, 99, 100	
<b>Jordan</b>	
39-56, 58-72, 74-91	92, 94-96, 99, 100
<b>Kazakhstan</b>	
82 (C176, R183) , 87, 88, 91	80, 81, 82 (P081) , 83-86, 89, 90, 92, 94-96, 99, 100
<b>Kenya</b>	
48-56, 58-72, 74-92, 94-96, 99, 100	
<b>Kiribati</b>	
94	88-92, 95, 96, 99, 100
<b>Korea, Republic of</b>	
79-92, 94-96, 99, 100	
<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, 94-96, 99, 100
<b>Kyrgyzstan</b>	
87, 89	79-86, 88, 90-92, 94-96, 99, 100

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>Lao People's Democratic Republic</b>	
48-56, 58-72, 74-81, 82 (R183, C176) , 83-92, 94-96, 99, 100	<b>82 (P081)</b>
<b>Latvia</b>	
79-92, 94-96	<b>99, 100</b>
<b>Lebanon</b>	
32-56, 58-72, 74-92, 94-96	<b>99, 100</b>
<b>Lesotho</b>	
66-72, 74-92, 94-96	<b>99, 100</b>
<b>Liberia</b>	
31-56, 58-72, 74-76, 77 (C170, C171, R177, R178) , 78-81, 82 (C176, R183) , 83-87, 91, 94	<b>77 (P089) , 82 (P081) , 88-90, 92, 95, 96, 99, 100</b>
<b>Libya</b>	
35-56, 58-72, 74-82, 87	<b>83-86, 88-92, 94-96, 99, 100</b>
<b>Lithuania</b>	
79-92, 94-96, 99	<b>100</b>
<b>Luxembourg</b>	
31-56, 58-72, 74-92, 94-96	<b>99, 100</b>
<b>Madagascar</b>	
45-56, 58-72, 74-89, 91	<b>90, 92, 94-96, 99, 100</b>
<b>Malawi</b>	
49-56, 58-72, 74-92, 94-96	<b>99, 100</b>
<b>Malaysia</b>	
41-56, 58-72, 74-92, 94, 95 (C187, R197)	<b>95 (R198) , 96, 99, 100</b>
<b>Maldives, Republic of</b>	
-	<b>99, 100</b>
<b>Mali</b>	
45-56, 58-72, 74-83, 84 (C178, C179, C180, R185, R186, R187) , 85, 87-89, 90 (R193, R194) , 91	<b>84 (P147) , 86, 90 (P155) , 92, 94-96, 99, 100</b>
<b>Malta</b>	
49-56, 58-72, 74-92, 94, 95	<b>96, 99, 100</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>Marshall Islands</b>	
-	99, 100
<b>Mauritania</b>	
45-56, 58-72, 74-80, 81 (C175) , 82 (C176, R183) , 83, 84 (C178, C179, C180, R185, R186, R187) , 85-91	81 (R182) , 82 (P081) , 84 (P147) , 92, 94-96, 99, 100
<b>Mauritius</b>	
53-56, 58-72, 74-92, 94-96, 99, 100	
<b>Mexico</b>	
31-56, 58-72, 74-89, 90 (P155, R194) , 91, 94	90 (R193) , 92, 95, 96, 99, 100
<b>Moldova, Republic of</b>	
79-91, 95 (C187, R197)	92, 94, 95 (R198) , 96, 99, 100
<b>Mongolia</b>	
52-56, 58-72, 74-81, 82 (C176, R183) , 83-92, 94-96, 99, 100	82 (P081)
<b>Montenegro</b>	
96, 99	100
<b>Morocco</b>	
39-56, 58-72, 74-92, 94-96, 99, 100	
<b>Mozambique</b>	
61-72, 74-82, 87	83-86, 88-92, 94-96, 99, 100
<b>Myanmar</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Namibia</b>	
65-72, 74-92, 94-96	99, 100
<b>Nepal</b>	
51-56, 58-72, 74-92, 94, 95	96, 99, 100
<b>Netherlands</b>	
31-56, 58-72, 74-92, 94, 95 (R198) , 96	95 (C187, R197) , 99, 100
<b>New Zealand</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	

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>Nicaragua</b>	
40-56, 58-72, 74-92, 94-96, 99	100
<b>Niger</b>	
45-56, 58-72, 74-82, 87, 88, 95 (C187, R197)	83-86, 89-92, 94, 95 (R198) , 96, 99, 100
<b>Nigeria</b>	
45-56, 58-72, 74-92, 95	94, 96, 99, 100
<b>Norway</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>Oman</b>	
81-92, 95 (R197, R198) , 99	94, 95 (C187) , 96, 100
<b>Pakistan</b>	
31-56, 58-72, 74-80, 87, 91	81-86, 88-90, 92, 94-96, 99, 100
<b>Panama</b>	
31-56, 58-72, 74-87, 88 (R191) , 89 (R192) , 90 (R193, R194) , 92, 94	88 (C183) , 89 (C184) , 90 (P155) , 91, 95, 96, 99, 100
<b>Papua New Guinea</b>	
61-72, 74-87	88-92, 94-96, 99, 100
<b>Paraguay</b>	
40-56, 58-72, 74-92, 94-96, 100	99
<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, 94-96, 99, 100
<b>Philippines</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Poland</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Portugal</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>Qatar</b>	
58-72, 74-92, 94-96, 99	100



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)
<hr/>	
<b>Romania</b>	
39-56, 58-72, 74-92, 94-96, 99, 100	
<hr/>	
<b>Russian Federation</b>	
37-56, 58-72, 74-88, 91, 94, 95 (C187, R197)	
<hr/>	
<b>Rwanda</b>	
47-56, 58-72, 74-79, 81, 87	80, 82-86, 88-92, 94-96, 99, 100
<hr/>	
<b>Saint Kitts and Nevis</b>	
84, 87, 94	83, 85, 86, 88-92, 95, 96, 99, 100
<hr/>	
<b>Saint Lucia</b>	
67 (C154, R163) , 68 (C158, R166) , 87	66, 67 (C155, C156, R164, R165) , 68 (C157, P110) , 69-72, 74-86, 88-92, 94-96, 99, 100
<hr/>	
<b>Saint Vincent and the Grenadines</b>	
84, 86, 87, 94	82, 83, 85, 88-92, 95, 96, 99, 100
<hr/>	
<b>Samoa</b>	
-	94-96, 99, 100
<hr/>	
<b>San Marino</b>	
68-72, 74-92, 94-96	99, 100
<hr/>	
<b>Sao Tome and Principe</b>	
68-72, 74-76, 87, 89	77-86, 88, 90-92, 94-96, 99, 100
<hr/>	
<b>Saudi Arabia</b>	
61-72, 74-92, 94-96, 99	100
<hr/>	
<b>Senegal</b>	
45-56, 58-72, 74-81, 82 (R183, C176) , 83, 84 (R185, R186, R187, C178, C179, C180) , 85-89, 90 (R193, R194) , 91, 92, 94-96	82 (P081) , 84 (P147) , 90 (P155) , 99, 100
<hr/>	
<b>Serbia</b>	
89-92, 94-96, 99, 100	
<hr/>	
<b>Seychelles</b>	
63-72, 74-88	89-92, 94-96, 99, 100
<hr/>	
<b>Sierra Leone</b>	
45-56, 58-61, 62 (C145, C147, R153, R155)	62 (C146, R154) , 63-72, 74-92, 94-96, 99, 100
<hr/>	

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>Singapore</b>	
50-56, 58-72, 74-92, 94-96, 99, 100	
<b>Slovakia</b>	
80-92, 94-96, 99, 100	
<b>Slovenia</b>	
79-92, 94-96, 99	100
<b>Solomon Islands</b>	
74, 87	70-72, 75-86, 88-92, 94-96, 99, 100
<b>Somalia</b>	
45-56, 58-72, 74, 75	76-92, 94-96, 99, 100
<b>South Africa</b>	
81, 82 (C176, R183) , 83-92, 94-96	99, 100
<b>Spain</b>	
39-56, 58-72, 74-87, 89, 90 (R193, R194) , 91, 92, 94, 95, 99	88, 90 (P155) , 96, 100
<b>Sri Lanka</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>Sudan</b>	
39-56, 58-72, 74-80, 87	81-86, 88-92, 94-96, 99, 100
<b>Suriname</b>	
61-72, 74-89	90-92, 94-96, 99, 100
<b>Swaziland</b>	
60-72, 74-92, 94-96	99, 100
<b>Sweden</b>	
31-56, 58-72, 74-92, 94, 95, 99	96, 100
<b>Switzerland</b>	
31-56, 58-72, 74-92, 94-96, 99	100
<b>Syrian Arab Republic</b>	
31-56, 58-65, 67, 68, 69 (C159, R167) , 71, 72, 74-76, 77 (C170, R177) , 87-89, 90 (P155)	66, 69 (R168) , 70, 77 (C171, P089, R178) , 78-86 90 (R193, R194) , 91, 92, 94-96, 99, 100

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>Tajikistan</b>	
81-83, 86, 87	84, 85, 88-92, 94-96, 99, 100
<b>Tanzania , United Republic of</b>	
46-56, 58-72, 74-92, 94-96, 99, 100	
<b>Thailand</b>	
31-56, 58-72, 74-92, 94-96	99, 100
<b>The former Yugoslav Republic of Macedonia</b>	
80-83, 85, 87, 88, 95 (C187, R197)	84, 86, 89-92, 94, 95 (R198) , 96, 99, 100
<b>Timor-Leste</b>	
92, 94-96	99, 100
<b>Togo</b>	
44-56, 58-72, 74-87, 89, 94, 95 (C187, R197)	88, 90-92, 95 (R198) , 96, 99, 100
<b>Trinidad and Tobago</b>	
47-56, 58-72, 74-92, 94, 95, 99	96, 100
<b>Tunisia</b>	
39-56, 58-72, 74-92, 94-96, 99, 100	
<b>Turkey</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>Turkmenistan</b>	
81-92, 94-96, 99, 100	
<b>Tuvalu</b>	
-	99, 100
<b>Uganda</b>	
47-56, 58-72, 74-80, 87	81-86, 88-92, 94-96, 99, 100
<b>Ukraine</b>	
37-56, 58-72, 74-90	91, 92, 94-96, 99, 100
<b>United Arab Emirates</b>	
58-72, 74-92, 95, 96	94, 99, 100

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 Kingdom</b>	
31-56, 58-72, 74-92, 94-96, 99, 100	
<b>United States</b>	
66-72, 74-92, 94-96, 99, 100	
<b>Uruguay</b>	
31-56, 58-72, 74-89, 90 (R193, R194) , 91, 92, 95 (R197, R198) , 100	90 (P155) , 94, 95 (C187) , 96, 99
<b>Uzbekistan</b>	
80-92, 94-96, 99, 100	
<b>Vanuatu</b>	
-	91, 92, 94-96, 99, 100
<b>Venezuela, Bolivarian Republic of</b>	
41-56, 58-72, 74-92, 94-96, 99	100
<b>Viet Nam</b>	
79-92, 94-96, 99, 100	
<b>Yemen</b>	
49-56, 58-72, 74-87, 88 (C183) , 89 (C184) , 91, 95 (C187)	88 (R191) , 89 (R192) , 90, 92, 94, 95 (R197, R198) , 96, 99, 100
<b>Zambia</b>	
49-56, 58-72, 74-92, 94-96	99, 100
<b>Zimbabwe</b>	
66-72, 74-92, 94-96, 99, 100	

**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 7 December 2012)**

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>				
<b>51st</b> (June 1967)	116	1	0	<b>117</b>
<b>52nd</b> (June 1968)	117	0	1	<b>118</b>
<b>53rd</b> (June 1969)	120	1	0	<b>121</b>
<b>54th</b> (June 1970)	119	1	0	<b>120</b>
<b>55th</b> (October 1970)	119	1	0	<b>120</b>
<b>56th</b> (June 1971)	120	0	0	<b>120</b>
<b>58th</b> (June 1973)	122	1	0	<b>123</b>
<b>59th</b> (June 1974)	125	0	0	<b>125</b>
<b>60th</b> (June 1975)	125	1	0	<b>126</b>
<b>61st</b> (June 1976)	131	0	0	<b>131</b>
<b>62nd</b> (October 1976)	128	1	2	<b>131</b>
<b>63rd</b> (June 1977)	130	3	1	<b>134</b>
<b>64th</b> (June 1978)	133	1	1	<b>135</b>
<b>65th</b> (June 1979)	135	0	2	<b>137</b>
<b>66th</b> (June 1980)	137	0	5	<b>142</b>
<b>67th</b> (June 1981)	137	5	1	<b>143</b>
<b>68th</b> (June 1982)	140	3	4	<b>147</b>
<b>69th</b> (June 1983)	142	2	4	<b>148</b>
<b>70th</b> (June 1984)	142	0	7	<b>149</b>
<b>71st</b> (June 1985)	145	1	3	<b>149</b>
<b>72nd</b> (June 1986)	145	0	4	<b>149</b>
<b>74th</b> (October 1987)	145	0	4	<b>149</b>
<b>75th</b> (June 1988)	143	2	4	<b>149</b>
<b>76th</b> (June 1989)	141	0	6	<b>147</b>
<b>77th</b> (June 1990)	133	4	10	<b>147</b>
<b>78th</b> (June 1991)	137	0	12	<b>149</b>
<b>79th</b> (June 1992)	140	2	14	<b>156</b>
<b>80th</b> (June 1993)	148	2	17	<b>167</b>
<b>81st</b> (June 1994)	148	2	21	<b>171</b>
<b>82nd</b> (June 1995)	137	14	22	<b>173</b>
<b>83rd</b> (June 1996)	139	2	33	<b>174</b>
<b>84th</b> (October 1996)	135	10	29	<b>174</b>
<b>85th</b> (June 1997)	137	3	34	<b>174</b>
<b>86th</b> (June 1998)	133	0	41	<b>174</b>
<b>87th</b> (June 1999)	172	0	2	<b>174</b>

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>				
<b>88th</b> (June 2000)	129	4	42	<b>175</b>
<b>89th</b> (June 2001)	125	4	46	<b>175</b>
<b>90th</b> (June 2002)	108	15	52	<b>175</b>
<b>91st</b> (June 2003)	127	0	49	<b>176</b>
<b>92nd</b> (June 2004)	111	0	66	<b>177</b>
<b>94th</b> (February 2006)	117	0	61	<b>178</b>
<b>95th</b> (June 2006)	103	12	63	<b>178</b>
<b>96th</b> (June 2007)	90	0	88	<b>178</b>
<b>99th</b> (June 2010)	62	0	121	<b>183</b>
<b>100th</b> (June 2011)	49	0	134	<b>183</b>

## 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, 111</b></p> <p><i>Direct requests on Conventions Nos 111, 137</i></p> <p><i>Direct request on submission</i></p>
<b>Albania</b>	<p><b>Observation on Convention No. 111</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 156</i></p> <p><b>Observation on submission</b></p>
<b>Algeria</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 32, 42, 87, 100, 111, 119, 120, 122</b></p> <p><i>Direct requests on Conventions Nos 24, 29, 44, 77, 78, 81, 97, 100, 111, 127, 155</i></p> <p><i>Direct request on submission</i></p>
<b>Angola</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 88, 100, 111</b></p> <p><i>Direct requests on Conventions Nos 12, 17, 18, 19, 27, 29, 81, 100, 105, 111</i></p> <p><b>Observation on submission</b></p>
<b>Antigua and Barbuda</b>	<p><b>Observations on Conventions Nos 17, 81, 111</b></p> <p><i>Direct requests on Conventions Nos 12, 94, 100, 111, 131, 155</i></p> <p><b>Observation on submission</b></p>
<b>Argentina</b>	<p><b>Observations on Conventions Nos 1, 17, 30, 32, 42, 81, 87, 100, 111, 129, 169</b></p> <p><i>Direct requests on Conventions Nos 17, 26, 81, 95, 100, 111</i></p> <p><i>Direct request on submission</i></p>
<b>Armenia</b>	<p><b>Observations on Conventions Nos 81, 100</b></p> <p><i>Direct requests on Conventions Nos 17, 18, 29, 81, 98, 100, 105, 111, 144</i></p>
<b>Australia</b>  Norfolk Island	<p><b>Observations on Conventions Nos 81, 155</b></p> <p><i>Direct requests on Conventions Nos 27, 81, 137, 155</i></p> <p><i>Direct request on Convention No. 100</i></p>
<b>Austria</b>	<p><b>Observations on Conventions Nos 81, 99, 100, 122</b></p> <p><i>Direct requests on Conventions Nos 26, 27, 95, 99, 100, 111, 128</i></p> <p><i>Direct request on submission</i></p>
<b>Azerbaijan</b>	<p><b>Observations on Conventions Nos 100, 111</b></p> <p><i>Direct requests on Conventions Nos 95, 100, 111, 122, 126</i></p> <p><b>Observation on submission</b></p>
<b>Bahamas</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 87, 98, 105, 138</b></p> <p><i>Direct requests on Conventions Nos 88, 95, 97, 100, 111, 144, 182</i></p> <p><b>Observation on submission</b></p>
<b>Bahrain</b>	<p><b>Observations on Conventions Nos 81, 111</b></p> <p><i>Direct requests on Conventions Nos 81, 111</i></p> <p><b>Observation on submission</b></p>
<b>Bangladesh</b>	<p><b>Observations on Conventions Nos 18, 87, 98, 100, 111</b></p> <p><i>Direct request on Convention No. 111</i></p> <p><i>Response received to a direct request on Convention No. 19</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, 97, 98, 102, 108, 111, 115, 118, 122, 128</b></p> <p><i>Direct requests on Conventions Nos 26, 95, 97, 98, 100, 102, 105, 111, 128, 144, 147</i></p>

<b>Belarus</b>	<b>Observation on Convention No. 87</b> <i>Direct requests on Conventions Nos 100, 111, 122, 144</i>
<b>Belgium</b>	<b>Observations on Conventions Nos 81, 100, 129</b> <i>Direct requests on Conventions Nos 32, 100, 102, 111, 121, 122, 125, 126</i> <i>Direct request on submission</i>
<b>Belize</b>	<i>Direct requests on Conventions Nos 100, 111, 144</i> <b>Observation on submission</b>
<b>Benin</b>	<i>Direct requests on Conventions Nos 18, 100, 111</i> <i>Direct request on submission</i>
<b>Bolivia, Plurinational State of</b>	<b>Observations on Conventions Nos 81, 100, 111, 128, 129, 131, 169</b> <i>Direct requests on Conventions Nos 19, 81, 96, 100, 111, 118, 122, 129</i> <b>Observation on submission</b>
<b>Bosnia and Herzegovina</b>	<b>Observation on Convention No. 111</b> <i>Direct requests on Conventions Nos 94, 97, 100, 102, 111, 119, 121, 126, 136, 139, 143, 148, 155, 161, 162, 174, 175, 176, 177, 184, 185, 187</i> <i>Response received to direct requests on Conventions Nos. 12, 19, 32</i> <i>Direct request on submission</i>
<b>Botswana</b>	<b>Observations on Conventions Nos 98, 100, 111, 144, 151</b> <i>Direct requests on Conventions Nos 95, 100, 111</i> <i>Direct request on submission</i>
<b>Brazil</b>	<b>Observations on Conventions Nos 94, 111, 122, 125, 140, 169</b> <i>Direct requests on Conventions Nos 95, 100, 102, 111, 113, 126, 137, 185</i> <b>Observation on submission</b>
<b>Brunei Darussalam</b>	<i>Direct request on submission</i>
<b>Bulgaria</b>	<b>Observations on Conventions Nos 81, 87, 94, 98</b> <i>Direct requests on Conventions Nos 26, 27, 32, 44, 77, 81, 95, 100, 102, 111, 113, 144, 156, 173, 177</i> <i>Response received to a direct request on Convention No. 78</i> <i>Direct request on submission</i>
<b>Burkina Faso</b>	<b>Observations on Conventions Nos 17, 18, 87, 98, 100, 138, 161, 182</b> <i>Direct requests on Conventions Nos 6, 19, 29, 81, 87, 95, 97, 98, 100, 105, 111, 129, 131, 138, 143, 144, 159, 170, 173, 182, 184</i> <i>Response received to a direct request on Convention No. 141</i> <i>Direct request on submission</i>
<b>Burundi</b>	<b>General observation</b> <b>Observations on Conventions Nos 11, 26, 29, 62, 81, 87, 94, 98, 100, 111, 138, 144</b> <i>Direct requests on Conventions Nos 14, 17, 27, 29, 42, 52, 64, 87, 89, 100, 101, 105, 111, 135, 138</i> <b>Observation on submission</b>
<b>Cambodia</b>	<b>Observations on Conventions Nos 29, 87, 100, 122</b> <i>Direct requests on Conventions Nos 29, 87, 100, 111</i> <b>Observation on submission</b>
<b>Cameroon</b>	<b>Observations on Conventions Nos 81, 94, 95, 100, 111, 143</b> <i>Direct requests on Conventions Nos 81, 97, 100, 111, 143</i> <i>Direct request on submission</i>
<b>Canada</b>	<b>Observations on Conventions Nos 87, 100, 162</b> <i>Direct requests on Conventions Nos 27, 100, 162</i> <i>Direct request on submission</i>
<b>Cape Verde</b>	<b>Observations on Conventions Nos 81, 100, 118</b> <i>Direct requests on Conventions Nos 17, 19, 81, 100, 111, 155</i>



<b>Central African Republic</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 18, 81, 100, 118</b></p> <p><i>Direct requests on Conventions Nos 17, 19, 100, 111, 118</i></p> <p><i>Direct request on submission</i></p>
<b>Chad</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 29, 81, 87, 98, 111, 144, 182</b></p> <p><i>Direct requests on Conventions Nos 26, 29, 95, 100, 105, 138, 173, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Chile</b>	<p><b>Observations on Conventions Nos 24, 25, 35, 37, 100, 111, 122, 161, 169</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 121, 161</i></p> <p><b>Observation on submission</b></p>
<b>China</b>	<p><b>Observations on Conventions Nos 100, 122, 155, 167</b></p> <p><i>Direct requests on Conventions Nos 26, 32, 100, 111, 144, 155, 167, 170</i></p>
Hong Kong Special Administrative Region	<p><b>Observations on Conventions Nos 81, 97</b></p> <p><i>Direct requests on Conventions Nos 32, 81, 97, 122</i></p>
Macau Special Administrative Region	<p><i>Direct requests on Conventions Nos 26, 81, 100, 111, 122, 144</i></p>
<b>Colombia</b>	<p><b>Observations on Conventions Nos 12, 17, 18, 81, 87, 100, 111, 129, 144, 162, 169</b></p> <p><i>Direct requests on Conventions Nos 81, 129, 162</i></p> <p><b>Observation on submission</b></p> <p><i>Direct request on submission</i></p>
<b>Comoros</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 17, 19, 42, 81, 98, 99, 100, 111</b></p> <p><i>Direct requests on Conventions Nos 1, 12, 13, 29, 77, 100, 105, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Congo</b>	<p><b>Observations on Conventions Nos 29, 81, 111, 152, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 100, 105, 111, 182</i></p> <p><b>Observation on submission</b></p>
<b>Costa Rica</b>	<p><b>Observations on Conventions Nos 1, 81, 95, 98, 100, 102, 129, 131, 134, 137, 144</b></p> <p><i>Direct requests on Conventions Nos 81, 96, 100, 111, 129</i></p>
<b>Côte d'Ivoire</b>	<p><b>Observation on Convention No. 111</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 133</i></p> <p><b>Observation on submission</b></p>
<b>Croatia</b>	<p><b>Observations on Conventions Nos 87, 111, 119, 156</b></p> <p><i>Direct requests on Conventions Nos 87, 90, 100, 111, 119, 122, 148, 156</i></p> <p><i>Response received to a direct request on Convention No. 113</i></p> <p><b>Observation on submission</b></p>
<b>Cuba</b>	<p><b>Observations on Conventions Nos 81, 87, 100, 111</b></p> <p><i>Direct requests on Conventions Nos 17, 81, 97, 100, 111, 137, 152</i></p> <p><i>Direct request on submission</i></p>
<b>Cyprus</b>	<p><i>Direct requests on Conventions Nos 81, 100, 111</i></p>
<b>Czech Republic</b>	<p><b>Observation on Convention No. 111</b></p> <p><i>Direct requests on Conventions Nos 27, 99, 100, 111</i></p>
<b>Democratic Republic of the Congo</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 81, 100, 102, 111, 121, 144, 150</b></p> <p><i>Direct requests on Conventions Nos 12, 19, 26, 29, 81, 95, 100, 105, 111, 118, 135, 138, 150, 158</i></p> <p><b>Observation on submission</b></p>
<b>Denmark</b>	<p><i>Direct requests on Conventions Nos 100, 102, 111, 118, 122, 169</i></p> <p><i>Response received to a direct request on Convention No. 126</i></p> <p><i>Direct request on submission</i></p>
Greenland	<p><i>Direct request on Convention No. 122</i></p> <p><i>Response received to a direct request on Convention No. 5</i></p>

<b>Djibouti</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 19, 24, 26, 37, 63, 81, 87, 94, 95, 96, 98, 100, 115, 120, 122, 144</b>  <i>Direct requests on Conventions Nos 9, 16, 17, 18, 23, 29, 38, 55, 56, 71, 73, 87, 88, 100, 101, 105, 106, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Dominica</b>	<p><i>General direct request</i>  <i>Direct requests on Conventions Nos 19, 94, 97, 100, 111, 147</i></p> <p><b>Observation on submission</b></p>
<b>Dominican Republic</b>	<p><b>Observations on Conventions Nos 77, 98, 100, 111, 144</b>  <i>Direct requests on Conventions Nos 19, 26, 77, 95, 100, 111, 122</i>  <i>Direct request on submission</i></p>
<b>Ecuador</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 81, 95, 111, 118, 121, 122, 128, 130, 131, 149, 152</b>  <i>Direct requests on Conventions Nos 81, 97, 100, 111, 123, 128, 130</i>  <i>Direct request on submission</i></p>
<b>Egypt</b>	<p><b>Observations on Conventions Nos 87, 100, 118</b>  <i>Direct requests on Conventions Nos 87, 96, 100, 111, 137</i></p>
<b>El Salvador</b>	<p><b>Observations on Conventions Nos 81, 111, 122, 129</b>  <i>Direct requests on Conventions Nos 81, 100, 111, 142, 144</i></p> <p><b>Observation on submission</b></p>
<b>Equatorial Guinea</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 1, 30, 87, 98</b>  <i>Direct requests on Conventions Nos 1, 29, 30, 103, 105, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Eritrea</b>	<p><b>Observation on Convention No. 98</b>  <i>Direct requests on Conventions Nos 87, 100, 111</i>  <i>Direct request on submission</i></p>
<b>Estonia</b>	<p><b>Observation on Convention No. 81</b>  <i>Direct requests on Conventions Nos 27, 81, 100, 111, 129</i></p>
<b>Ethiopia</b>	<p><b>Observations on Conventions Nos 87, 105, 111</b>  <i>Direct requests on Conventions Nos 29, 100, 105, 111, 156</i></p> <p><b>Observation on submission</b></p>
<b>Fiji</b>	<p><b>Observations on Conventions Nos 87, 98, 100, 111</b>  <i>Direct requests on Conventions Nos 81, 100, 111, 129, 169</i></p> <p><b>Observation on submission</b></p>
<b>Finland</b>	<p><b>Observations on Conventions Nos 100, 111, 156</b>  <i>Direct requests on Conventions Nos 81, 100, 111, 121, 128, 129, 137, 152, 156</i>  <i>Response received to direct requests on Conventions Nos. 118, 130</i>  <i>Direct request on submission</i></p>
<b>France</b>	<p><b>Observations on Conventions Nos 97, 111, 118, 152</b>  <i>Direct requests on Conventions Nos 27, 95, 97, 100, 111, 114, 125, 126, 137, 156, 179, 185</i>  <i>Response received to direct requests on Conventions Nos. 42, 113</i>  <i>Direct request on submission</i></p>
<b>French Polynesia</b>	<p><b>Observation on Convention No. 115</b>  <i>Direct requests on Conventions Nos 94, 95, 100, 111, 122, 125, 126, 131, 144</i>  <i>Direct request on Convention No. 108</i></p>
<b>French Southern and Antarctic Territories</b>	<p><i>Response received to a direct request on Convention No. 111</i></p>
<b>New Caledonia</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 111, 115</b>  <i>Direct requests on Conventions Nos 42, 44, 81, 95, 100, 111, 120, 125, 126, 129, 131</i></p>
<b>Gabon</b>	<p><b>Observation on Convention No. 182</b>  <i>Direct requests on Conventions Nos 12, 19, 29, 105, 138, 144, 182</i></p> <p><b>Observation on submission</b></p>

<b>Gambia</b>	<p><i>General direct request</i></p> <p><i>Direct requests on Conventions Nos 29, 105, 138, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Georgia</b>	<p><b>Observations on Conventions Nos 52, 98, 138</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Germany</b>	<p><b>Observations on Conventions Nos 29, 122, 167</b></p> <p><i>Direct requests on Conventions Nos 26, 27, 97, 99, 100, 111, 125, 138, 152, 182, 187</i></p> <p><i>Direct request on submission</i></p>
<b>Ghana</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 94, 98, 100, 105</b></p> <p><i>Direct requests on Conventions Nos 26, 29, 74, 81, 87, 92, 100, 105, 111, 115, 119, 182</i></p> <p><b>Observation on submission</b></p>
<b>Greece</b>	<p><b>Observations on Conventions Nos 42, 81, 87, 95, 98, 100, 102, 111, 122, 138, 150, 154, 156</b></p> <p><i>Direct requests on Conventions Nos 17, 19, 81, 126, 144, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Grenada</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 100, 144</b></p> <p><i>Direct requests on Conventions Nos 26, 87, 94, 95, 97, 100, 105, 111, 138, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Guatemala</b>	<p><b>Observations on Conventions Nos 1, 30, 87, 95, 103, 105, 122, 127, 138, 144, 162, 169, 182</b></p> <p><i>Direct requests on Conventions Nos 19, 29, 97, 117, 118, 138, 161, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Guinea</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 26, 81, 87, 94, 98, 99, 111, 115, 117, 118, 119, 120, 121, 122, 134, 136, 139, 140, 142, 144, 148, 150, 152, 159, 182</b></p> <p><i>Direct requests on Conventions Nos 3, 13, 16, 29, 62, 89, 90, 95, 100, 105, 111, 113, 118, 132, 133, 138, 143, 156, 182</i></p> <p><i>Response received to a direct request on Convention No. 114</i></p> <p><b>Observation on submission</b></p>
<b>Guinea-Bissau</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 12, 17, 18, 19, 81</b></p> <p><i>Direct requests on Conventions Nos 29, 74, 81, 105, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Guyana</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 42, 81, 87, 98, 100, 111, 129, 137, 140, 144, 150</b></p> <p><i>Direct requests on Conventions Nos 2, 19, 45, 81, 94, 95, 97, 100, 111, 115, 136, 138, 139, 142, 149, 150, 166, 172, 175, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Haiti</b>	<p><b>Observations on Conventions Nos 12, 17, 19, 24, 25, 42, 81, 87, 98, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 87, 100, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Honduras</b>	<p><b>Observations on Conventions Nos 42, 81, 87, 98, 138, 169, 182</b></p> <p><i>Direct requests on Conventions Nos 27, 29, 32, 81, 105, 182</i></p> <p><b>Observation on submission</b></p>
<b>Hungary</b>	<p><b>Observations on Conventions Nos 29, 98, 122</b></p> <p><i>Direct requests on Conventions Nos 26, 87, 95, 99, 100, 105, 111, 182, 185</i></p> <p><i>Response received to direct requests on Conventions Nos. 77, 78, 138</i></p> <p><i>Direct request on submission</i></p>
<b>Iceland</b>	<p><b>Observations on Conventions Nos 122, 159</b></p> <p><i>Direct requests on Conventions Nos 81, 98, 100, 111, 129, 144, 156, 182</i></p> <p><i>Response received to a direct request on Convention No. 138</i></p> <p><i>Direct request on submission</i></p>

<b>India</b>	<b>Observations on Conventions Nos 29, 42, 100, 111, 122</b> <i>Direct requests on Conventions Nos 27, 29, 32, 100, 105, 111, 127, 144, 174</i>
<b>Indonesia</b>	<b>Observations on Conventions Nos 29, 87, 105, 138, 144, 182</b> <i>Direct requests on Conventions Nos 19, 27, 87, 105, 138, 182</i>
<b>Iran, Islamic Republic of</b>	<b>Observations on Conventions Nos 95, 111</b> <i>Direct requests on Conventions Nos 29, 182</i> <i>Direct request on submission</i>
<b>Iraq</b>	<b>Observation on Convention No. 98</b> <i>Direct requests on Conventions Nos 1, 8, 14, 16, 19, 27, 29, 30, 89, 92, 105, 106, 107, 118, 119, 122, 131, 132, 135, 137, 138, 144, 145, 146, 149, 152, 153, 182</i> <b>Observation on submission</b>
<b>Ireland</b>	<b>Observations on Conventions Nos 88, 111, 122, 144, 159, 182</b> <i>Direct requests on Conventions Nos 14, 26, 29, 62, 81, 98, 99, 100, 102, 111, 138, 139, 142, 155, 176, 179, 180, 182</i> <i>Response received to direct requests on Conventions Nos. 132, 177</i> <b>Observation on submission</b>
<b>Israel</b>	<b>Observations on Conventions Nos 97, 100, 111</b> <i>Direct requests on Conventions Nos 97, 100, 105, 111, 118, 138, 144, 182</i>
<b>Italy</b>	<b>Observations on Conventions Nos 111, 122</b> <i>Direct requests on Conventions Nos 42, 100, 105, 111, 138, 152, 182</i>
<b>Jamaica</b>	<b>Observations on Conventions Nos 29, 94, 105, 138, 144, 182</b> <i>Direct requests on Conventions Nos 29, 182</i> <i>Response received to a direct request on Convention No. 19</i> <b>Observation on submission</b>
<b>Japan</b>	<b>Observations on Conventions Nos 19, 29, 81, 100, 122, 131, 156, 181</b> <i>Direct requests on Conventions Nos 131, 144, 156, 182</i> <i>Response received to a direct request on Convention No. 121</i>
<b>Jordan</b>	<b>Observations on Conventions Nos 122, 144, 182</b> <i>Direct requests on Conventions Nos 29, 105, 138, 182</i> <b>Observation on submission</b>
<b>Kazakhstan</b>	<b>General observation</b> <b>Observations on Conventions Nos 100, 111, 138, 182</b> <i>Direct requests on Conventions Nos 29, 100, 105, 138, 182</i> <b>Observation on submission</b>
<b>Kenya</b>	<b>Observations on Conventions Nos 17, 29, 81, 105, 129, 138, 143, 144</b> <i>Direct requests on Conventions Nos 17, 19, 27, 29, 32, 81, 94, 97, 99, 105, 129, 131, 137, 138, 143, 182</i>
<b>Kiribati</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 29, 105</i> <b>Observation on submission</b>
<b>Korea, Republic of</b>	<b>Observations on Conventions Nos 19, 111, 131, 144</b> <i>Direct requests on Conventions Nos 111, 131</i> <i>Response received to direct requests on Conventions Nos. 138, 182</i>
<b>Kuwait</b>	<b>Observations on Conventions Nos 29, 105, 136, 144</b> <i>Direct requests on Conventions Nos 29, 138, 182</i> <b>Observation on submission</b>
<b>Kyrgyzstan</b>	<b>General observation</b> <b>Observations on Conventions Nos 148, 182</b> <i>Direct requests on Conventions Nos 11, 16, 17, 23, 27, 29, 69, 73, 77, 78, 79, 87, 92, 98, 105, 108, 111, 113, 115, 119, 124, 126, 133, 134, 138, 147, 154, 182</i> <b>Observation on submission</b>

<b>Lao People's Democratic Republic</b>	<p>General direct request</p> <p>Direct requests on Conventions Nos 29, 138, 182</p> <p>Direct request on submission</p>
<b>Latvia</b>	<p>Direct requests on Conventions Nos 29, 105, 131, 144, 173, 182</p> <p>Response received to direct requests on Conventions Nos. 6, 138</p> <p>Direct request on submission</p>
<b>Lebanon</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 17, 29, 71, 81, 138, 182</b></p> <p>Direct requests on Conventions Nos 19, 29, 59, 77, 78, 81, 90, 95, 105, 122, 131, 138, 152, 182</p> <p>Direct request on submission</p>
<b>Lesotho</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 81, 138, 182</b></p> <p>Direct requests on Conventions Nos 26, 29, 105, 144, 158, 182</p> <p>Direct request on submission</p>
<b>Liberia</b>	<p><b>Observations on Conventions Nos 29, 87, 98, 113, 114</b></p> <p>Direct requests on Conventions Nos 29, 81, 105, 111, 112, 144, 150, 182</p> <p><b>Observation on submission</b></p>
<b>Libya</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 95, 131</b></p> <p><b>Observation on submission</b></p>
<b>Lithuania</b>	<p>Direct requests on Conventions Nos 27, 29, 131, 173, 182</p> <p>Response received to a direct request on Convention No. 138</p>
<b>Luxembourg</b>	<p>Direct requests on Conventions Nos 9, 22, 26, 29, 68, 69, 73, 92, 96, 111, 133, 146, 147, 149, 158, 166, 178, 180</p> <p>Response received to a direct request on Convention No. 130</p> <p>Direct request on submission</p>
<b>Madagascar</b>	<p><b>Observations on Conventions Nos 81, 122, 124, 138, 144, 182</b></p> <p>Direct requests on Conventions Nos 26, 29, 81, 95, 97, 105, 118, 173, 182</p> <p>Response received to a direct request on Convention No. 6</p> <p><b>Observation on submission</b></p>
<b>Malawi</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 81, 129, 138, 144, 182</b></p> <p>Direct requests on Conventions Nos 19, 26, 29, 97, 98, 105, 150, 159, 182</p> <p>Direct request on submission</p>
<b>Malaysia</b>	<p><b>Observations on Conventions Nos 29, 81, 138, 182</b></p> <p>Direct requests on Conventions Nos 29, 81, 95, 144, 182</p> <p>Direct request on submission</p> <p>Peninsular <b>Observation on Convention No. 19</b> Response received to a direct request on Convention No. 17</p> <p>Sabah Direct request on Convention No. 94</p> <p>Sarawak <b>Observation on Convention No. 19</b> Direct request on Convention No. 94</p>
<b>Maldives, Republic of</b>	<p>Direct request on submission</p>
<b>Mali</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 138, 182</b></p> <p>Direct requests on Conventions Nos 19, 26, 29, 95, 105, 144, 182</p> <p><b>Observation on submission</b></p>
<b>Malta</b>	<p><b>Observation on Convention No. 98</b></p> <p>Direct requests on Conventions Nos 81, 95, 96, 129, 131, 148</p> <p>Direct request on submission</p>

<b>Mauritania</b>	<p><b>Observations on Conventions Nos 29, 81, 102, 118, 122, 138, 182</b>  <i>Direct requests on Conventions Nos 26, 94, 102, 105, 112, 114, 138, 182</i>  <b>Observation on submission</b></p>
<b>Mauritius</b>	<p><b>Observations on Conventions Nos 19, 105, 160</b>  <i>Direct requests on Conventions Nos 26, 29, 94, 95, 99, 137</i>  <i>Response received to a direct request on Convention No. 19</i></p>
<b>Mexico</b>	<p><b>Observations on Conventions Nos 29, 90, 111, 150, 155, 182</b>  <i>Direct requests on Conventions Nos 17, 27, 95, 131, 144, 155, 173, 182</i>  <i>Direct request on submission</i></p>
<b>Moldova, Republic of</b>	<p><i>Direct requests on Conventions Nos 29, 81, 95, 105, 129, 131, 138, 144, 152, 182</i>  <b>Observation on submission</b></p>
<b>Mongolia</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 111, 138</b>  <i>Direct requests on Conventions Nos 29, 105, 111, 123, 144, 182</i>  <i>Direct request on submission</i></p>
<b>Montenegro</b>	<p><i>Direct requests on Conventions Nos 97, 102, 121, 131, 138, 143, 144, 158, 182</i>  <i>Direct request on submission</i></p>
<b>Morocco</b>	<p><b>Observations on Conventions Nos 29, 94, 105, 138, 182</b>  <i>Direct requests on Conventions Nos 26, 29, 99, 182</i></p>
<b>Mozambique</b>	<p><b>Observations on Conventions Nos 105, 138, 144, 182</b>  <i>Direct requests on Conventions Nos 29, 105, 138, 182</i>  <b>Observation on submission</b></p>
<b>Myanmar</b>	<p><b>Observations on Conventions Nos 19, 26, 29, 87</b>  <i>Direct requests on Conventions Nos 6, 87</i>  <i>Direct request on submission</i></p>
<b>Namibia</b>	<p><b>Observations on Conventions Nos 29, 182</b>  <i>Direct requests on Conventions Nos 29, 105, 138, 144, 182</i>  <i>Direct request on submission</i></p>
<b>Nepal</b>	<p><b>Observations on Conventions Nos 29, 138, 144, 182</b>  <i>Direct requests on Conventions Nos 29, 105, 131, 138, 169, 182</i>  <i>Direct request on submission</i></p>
<b>Netherlands</b>	<p><b>Observations on Conventions Nos 94, 97, 102, 131</b>  <i>Direct requests on Conventions Nos 29, 90, 97, 102, 105, 128, 130, 138, 152, 159, 182</i>  <i>Response received to a direct request on Convention No. 95</i>  <i>Direct request on submission</i></p>
Aruba	<p><b>Observation on Convention No. 138</b>  <i>Direct requests on Conventions Nos 29, 81, 105, 121, 144</i>  <i>Response received to direct requests on Conventions Nos. 17, 25</i></p>
Caribbean Part of the Netherlands	<p><i>General direct request</i></p>
Curaçao	<p><i>Direct requests on Conventions Nos 81, 94, 95</i></p>
Sint Maarten	<p><i>Direct requests on Conventions Nos 94, 95</i></p>
<b>New Zealand</b>	<p><b>Observations on Conventions Nos 32, 182</b>  <i>Direct requests on Conventions Nos 26, 29, 59, 99, 144, 182</i>  <i>Response received to a direct request on Convention No. 42</i></p>
<b>Nicaragua</b>	<p><b>Observations on Conventions Nos 30, 78, 100, 111</b>  <i>Direct requests on Conventions Nos 27, 29, 77, 95, 111, 131, 144</i>  <i>Direct request on submission</i></p>
<b>Niger</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 29, 81, 102, 105, 138, 148, 182</b>  <i>Direct requests on Conventions Nos 29, 95, 105, 131, 156, 182</i>  <b>Observation on submission</b></p>

<b>Nigeria</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 87, 98, 105, 111, 123, 138, 144</b>  <i>Direct requests on Conventions Nos 8, 26, 29, 45, 94, 95, 100, 111, 137, 138, 182</i>  <b>Observation on submission</b></p>
<b>Norway</b>	<p><b>Observations on Conventions Nos 94, 129</b>  <i>Direct requests on Conventions Nos 26, 27, 95, 129, 137, 144, 156, 182</i>  <i>Direct request on submission</i></p>
<b>Oman</b>	<p><i>Direct request on submission</i></p>
<b>Pakistan</b>	<p><b>Observations on Conventions Nos 18, 29, 81, 87, 98</b>  <i>Direct requests on Conventions Nos 11, 18, 27, 87, 185</i>  <b>Observation on submission</b></p>
<b>Panama</b>	<p><b>Observations on Conventions Nos 81, 87, 88, 94, 98, 100, 111, 122</b>  <i>Direct requests on Conventions Nos 26, 81, 95, 100, 111, 125, 126</i>  <i>Direct request on submission</i></p>
<b>Papua New Guinea</b>	<p><b>Observation on Convention No. 98</b>  <i>Direct requests on Conventions Nos 26, 27, 87, 99, 122</i>  <b>Observation on submission</b></p>
<b>Paraguay</b>	<p><b>Observations on Conventions Nos 29, 77, 78, 79, 81, 87, 95, 98, 169</b>  <i>Direct requests on Conventions Nos 26, 29, 59, 81, 90, 99</i>  <i>Direct request on submission</i></p>
<b>Peru</b>	<p><b>Observations on Conventions Nos 29, 71, 87, 98, 111, 169</b>  <i>Direct requests on Conventions Nos 12, 26, 27, 77, 78, 87, 99, 105, 112, 113, 156</i>  <i>Response received to direct requests on Conventions Nos. 29, 59</i>  <b>Observation on submission</b></p>
<b>Philippines</b>	<p><b>Observations on Conventions Nos 87, 90, 94, 97, 98, 105</b>  <i>Direct requests on Conventions Nos 29, 95, 97, 99, 105, 143</i>  <i>Response received to a direct request on Convention No. 157</i></p>
<b>Poland</b>	<p><b>Observations on Conventions Nos 81, 87, 95, 98, 122</b>  <i>Direct requests on Conventions Nos 29, 95, 99, 102, 137</i>  <i>Response received to a direct request on Convention No. 24</i></p>
<b>Portugal</b>	<p><b>Observations on Conventions Nos 6, 77, 78, 98, 102, 131, 158</b>  <i>Direct requests on Conventions Nos 17, 18, 29, 87, 95, 102, 137, 156</i>  <i>Direct request on submission</i></p>
<b>Qatar</b>	<p><i>Direct request on submission</i></p>
<b>Romania</b>	<p><b>Observations on Conventions Nos 1, 87, 95, 98, 122</b>  <i>Direct requests on Conventions Nos 29, 87, 95, 102, 105, 131</i></p>
<b>Russian Federation</b>	<p><b>Observations on Conventions Nos 29, 81, 87, 98, 105, 111, 126, 138, 182</b>  <i>Direct requests on Conventions Nos 29, 79, 81, 87, 135, 154, 156, 182, 185</i>  <b>Observation on submission</b></p>
<b>Rwanda</b>	<p><b>Observations on Conventions Nos 62, 81, 87, 94, 98, 100, 111, 138</b>  <i>Direct requests on Conventions Nos 11, 12, 17, 19, 26, 29, 81, 87, 100, 105, 111, 118, 123, 138, 182</i>  <b>Observation on submission</b></p>
<b>Saint Kitts and Nevis</b>	<p><b>Observation on Convention No. 98</b>  <i>Direct request on Convention No. 87</i>  <b>Observation on submission</b></p>
<b>Saint Lucia</b>	<p><b>Observations on Conventions Nos 87, 98</b>  <i>Direct requests on Conventions Nos 5, 19, 26, 87, 95, 97, 108, 158</i>  <b>Observation on submission</b></p>

<b>Saint Vincent and the Grenadines</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 26, 94, 95, 122, 129, 144</i> <b>Observation on submission</b>
<b>Samoa</b>	<b>Observation on Convention No. 98</b> <i>Direct requests on Conventions Nos 29, 87, 100, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>San Marino</b>	<b>General observation</b> <b>Observation on Convention No. 160</b> <i>Direct requests on Conventions Nos 100, 111, 140, 143, 148, 150, 156, 159</i> <i>Direct request on submission</i>
<b>Sao Tome and Principe</b>	<b>General observation</b> <b>Observations on Conventions Nos 17, 18, 81, 87, 88, 98, 100, 111, 144, 159</b> <i>Direct requests on Conventions Nos 19, 29, 81, 105, 138, 182</i> <b>Observation on submission</b>
<b>Saudi Arabia</b>	<b>Observations on Conventions Nos 29, 111</b> <i>Direct requests on Conventions Nos 29, 90</i>
<b>Senegal</b>	<b>Observations on Conventions Nos 87, 122, 182</b> <i>Direct requests on Conventions Nos 26, 95, 96, 98, 99, 125, 182</i> <i>Response received to a direct request on Convention No. 10</i> <i>Direct request on submission</i>
<b>Serbia</b>	<b>Observations on Conventions Nos 87, 98, 131, 144, 187</b> <i>Direct requests on Conventions Nos 19, 87, 90, 102, 121, 156, 167, 187</i> <i>Response received to a direct request on Convention No. 12</i>
<b>Seychelles</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 26, 99, 138, 152, 182</i> <b>Observation on submission</b>
<b>Sierra Leone</b>	<b>General observation</b> <b>Observations on Conventions Nos 17, 29, 88, 94, 95, 98, 101, 111, 119, 125, 144</b> <i>Direct requests on Conventions Nos 26, 45, 81, 87, 100, 105, 126</i> <b>Observation on submission</b>
<b>Singapore</b>	<i>Direct requests on Conventions Nos 81, 100</i>
<b>Slovakia</b>	<b>Observations on Conventions Nos 1, 122</b> <i>Direct requests on Conventions Nos 17, 26, 42, 95, 98, 99, 105, 120, 139, 148, 151, 156, 158, 159, 161, 163, 164, 167, 173, 176, 181, 182, 187</i> <i>Response received to direct requests on Conventions Nos. 77, 78, 124</i>
<b>Slovenia</b>	<b>Observations on Conventions Nos 97, 98, 143</b> <i>Direct requests on Conventions Nos 32, 81, 95, 97, 114, 121, 129, 131, 143, 156, 158, 173, 182</i> <i>Direct request on submission</i>
<b>Solomon Islands</b>	<i>General direct request</i> <b>Observation on Convention No. 81</b> <i>Direct requests on Conventions Nos 26, 29, 81, 94, 95</i> <b>Observation on submission</b>
<b>Somalia</b>	<b>General observation</b> <b>Observation on submission</b>
<b>South Africa</b>	<b>Observation on Convention No. 87</b> <i>Direct requests on Conventions Nos 26, 29, 98, 105</i> <i>Direct request on submission</i>
<b>Spain</b>	<b>Observations on Conventions Nos 29, 88, 94, 98, 114, 122, 131, 158</b> <i>Direct requests on Conventions Nos 27, 77, 78, 87, 95, 102, 126, 173, 185</i> <i>Response received to a direct request on Convention No. 19</i> <i>Direct request on submission</i>



<b>Sri Lanka</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 100, 105</b>  <i>Direct requests on Conventions Nos 29, 87, 95, 100, 105, 131</i>  <i>Direct request on submission</i></p>
<b>Sudan</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 26, 29, 81, 95, 98, 105, 122</b>  <i>Direct request on Convention No. 19</i>  <b>Observation on submission</b></p>
<b>Suriname</b>	<p><b>Observations on Conventions Nos 94, 118</b>  <i>Direct requests on Conventions Nos 87, 95, 98, 105, 122</i>  <b>Observation on submission</b></p>
<b>Swaziland</b>	<p><b>Observations on Conventions Nos 81, 87, 98</b>  <i>Direct requests on Conventions Nos 81, 87, 90, 94, 131, 160</i>  <i>Response received to a direct request on Convention No. 123</i>  <i>Direct request on submission</i></p>
<b>Sweden</b>	<p><b>Observations on Conventions Nos 87, 98, 122, 152, 158</b>  <i>Direct requests on Conventions Nos 143, 156</i>  <i>Response received to a direct request on Convention No. 157</i>  <i>Direct request on submission</i></p>
<b>Switzerland</b>	<p><b>Observation on Convention No. 98</b>  <i>Direct requests on Conventions Nos 26, 29, 87, 168, 173</i></p>
<b>Syrian Arab Republic</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 87, 98, 100, 105</b>  <i>Direct requests on Conventions Nos 17, 94, 95, 96, 100, 125, 131, 170</i>  <b>Observation on submission</b></p>
<b>Tajikistan</b>	<p><i>General direct request</i>  <i>Direct requests on Conventions Nos 32, 77, 78, 79, 81, 87, 90, 95, 97, 98, 106, 113, 119, 120, 122, 143, 148, 155</i>  <b>Observation on submission</b></p>
<b>Tanzania , United Republic of Zanzibar</b>	<p><b>Observations on Conventions Nos 29, 87, 98</b>  <i>Direct requests on Conventions Nos 29, 59, 94, 95, 105, 131, 137</i>  <i>Direct request on Convention No. 85</i></p>
<b>Thailand</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 19, 29, 105, 122, 182</b>  <i>Direct requests on Conventions Nos 105, 138, 159, 182</i>  <i>Direct request on submission</i></p>
<b>The former Yugoslav Republic of Macedonia</b>	<p><b>Observation on Convention No. 98</b>  <i>Direct requests on Conventions Nos 87, 94, 97, 131, 143, 156, 158</i>  <b>Observation on submission</b></p>
<b>Timor-Leste</b>	<p><b>Observation on Convention No. 98</b>  <i>Direct requests on Conventions Nos 29, 87, 98, 182</i>  <i>Direct request on submission</i></p>
<b>Togo</b>	<p><b>Observations on Conventions Nos 98, 138, 182</b>  <i>Direct requests on Conventions Nos 26, 29, 87, 95, 105, 143, 182</i>  <i>Response received to a direct request on Convention No. 98</i>  <b>Observation on submission</b></p>
<b>Trinidad and Tobago</b>	<p><b>Observations on Conventions Nos 87, 98, 182</b>  <i>Direct requests on Conventions Nos 19, 81, 138, 144, 150, 182</i>  <i>Direct request on submission</i></p>
<b>Tunisia</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 87, 122</b>  <i>Direct requests on Conventions Nos 18, 26, 29, 88, 95, 99, 138, 182</i></p>

<b>Turkey</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 26, 29, 81, 87, 94, 95, 98, 99, 100, 105, 111, 158</b></p> <p><i>Direct requests on Conventions Nos 26, 29, 42, 77, 81, 94, 95, 99, 100, 111, 122, 123, 154</i></p> <p><i>Response received to a direct request on Convention No. 102</i></p>
<b>Turkmenistan</b>	<p><i>Direct requests on Conventions Nos 87, 98</i></p> <p><b>Observation on submission</b></p>
<b>Uganda</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 17, 26, 29, 81, 98, 105, 122, 144, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 45, 87, 94, 95, 100, 105, 111, 123, 124, 143, 154, 158, 182</i></p> <p><b>Observation on submission</b></p>
<b>Ukraine</b>	<p><b>Observations on Conventions Nos 87, 95, 98, 122</b></p> <p><i>Direct requests on Conventions Nos 29, 47, 77, 78, 124, 126, 131, 158, 173</i></p> <p><i>Response received to a direct request on Convention No. 79</i></p> <p><b>Observation on submission</b></p>
<b>United Arab Emirates</b>	<p><b>Observations on Conventions Nos 81, 105, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 89, 182</i></p> <p><i>Direct request on submission</i></p>
<b>United Kingdom</b>	<p><b>Observations on Conventions Nos 87, 97, 98, 122</b></p> <p><i>Direct requests on Conventions Nos 42, 87, 97, 98, 102, 124</i></p> <p><i>Direct requests on Conventions Nos 26, 29, 87, 94, 97, 99</i></p>
Anguilla	
Bermuda	<p><b>Observation on Convention No. 94</b></p> <p><i>Direct request on Convention No. 98</i></p>
British Virgin Islands	<p><b>Observation on Convention No. 85</b></p> <p><i>Direct requests on Conventions Nos 14, 19, 23, 26, 58, 82, 97, 98, 108</i></p>
Falkland Islands (Malvinas)	<p><i>Direct request on Convention No. 17</i></p>
Gibraltar	<p><b>Observation on Convention No. 81</b></p> <p><i>Response received to a direct request on Convention No. 59</i></p>
Guernsey	<p><i>Direct requests on Conventions Nos 19, 42, 97, 122</i></p> <p><i>Response received to direct requests on Conventions Nos. 5, 17</i></p>
Isle of Man	<p><i>Direct requests on Conventions Nos 97, 99, 102</i></p> <p><i>Response received to a direct request on Convention No. 32</i></p>
Jersey	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 17, 81, 97, 99</i></p>
Montserrat	<p><i>Direct requests on Conventions Nos 26, 95, 97</i></p>
St Helena	<p><i>Direct requests on Conventions Nos 14, 29, 98, 182</i></p> <p><i>Response received to a direct request on Convention No. 108</i></p>
<b>United States</b>	<p><b>Observations on Conventions Nos 105, 182</b></p> <p><i>Direct requests on Conventions Nos 105, 182</i></p>
<b>Uruguay</b>	<p><b>Observations on Conventions Nos 87, 94, 97, 98, 121, 129, 181</b></p> <p><i>Direct requests on Conventions Nos 27, 29, 32, 95, 97, 102, 118, 128, 129, 130, 131, 137</i></p> <p><i>Direct request on submission</i></p>
<b>Uzbekistan</b>	<p><b>Observations on Conventions Nos 98, 105, 182</b></p> <p><i>Direct requests on Conventions Nos 47, 52, 105, 122, 182</i></p> <p><b>Observation on submission</b></p>
<b>Vanuatu</b>	<p><b>General observation</b></p> <p><i>Direct requests on Conventions Nos 29, 105</i></p> <p><b>Observation on submission</b></p>
<b>Venezuela, Bolivarian Republic of</b>	<p><b>Observations on Conventions Nos 6, 26, 81, 87, 98, 105, 111, 122, 143, 144, 155, 169</b></p> <p><i>Direct requests on Conventions Nos 27, 29, 81, 95, 97, 143</i></p> <p><i>Direct request on submission</i></p>
<b>Viet Nam</b>	<p><b>Observation on Convention No. 81</b></p> <p><i>Direct requests on Conventions Nos 27, 29, 81, 124</i></p> <p><i>Response received to a direct request on Convention No. 6</i></p>

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<b>Yemen</b>	<b>Observations on Conventions Nos 81, 87, 94, 98, 111, 131, 138</b> <i>Direct requests on Conventions Nos 16, 19, 29, 59, 81, 95, 100, 105, 111, 122, 144, 156, 158, 182, 185</i> <i>Direct request on submission</i>
<b>Zambia</b>	<i>General direct request</i> <b>Observations on Conventions Nos 29, 87, 95, 98</b> <i>Direct requests on Conventions Nos 17, 18, 29, 97, 117, 122, 131, 144, 176</i> <i>Direct request on submission</i>
<b>Zimbabwe</b>	<b>Observations on Conventions Nos 87, 98, 105, 140, 159</b> <i>Direct requests on Conventions Nos 26, 29, 99, 105</i>

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